



Final Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-81
Regulation title	Regulations Governing Special Education Programs for Children with Disabilities in Virginia
Action title	Revisions to comply with the "Individuals with Disabilities Education Improvement Act of 2004" and its federal implementing regulations
Date this document prepared	June 2, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

Note: This represents the Board of Education's readoption on May 28, 2009 of the proposed regulations with no changes from its adoption at the September 28, 2008 Board of Education meeting.

The present action proposes substantive changes in the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. In a concurrent action, the Board of Education proposes to repeal the text of the current regulations (8 VAC 20-80) and promulgate new regulations (8 VAC 20-81). There are a number of substantive changes in the regulations, including the following areas: 1) Functions of the Virginia Department of Education (VDOE); 2) Responsibilities of local school divisions and state-operated programs; 3) Qualifications for Educational Interpreters; 4) Child find; 5) Eligibility determinations; 6) The development, review and revision of a student's individualized education program (IEP); 7) Parentally-placed private school students; 8) Discipline; 9) Procedural safeguards, including the appointment of surrogate parents and dispute resolution 10) Local educational agency

administration and governance; 11) Funding; and 12) The requirements regarding highly qualified personnel.

In response to public comments received, several provisions that were proposed to be significantly revised, or deleted, have been retained, including regarding parental consent for the termination of special education and related services, and the current administration of the due process system.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

During its meeting on May 28, 2009, the Board of Education readopted the proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (8 VAC 20-81-10 et seq.), with no changes from the version adopted on September 28, 2008, and directed the Department of Education to proceed with the requirements of the Administrative Process Act.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia*, at § 22.1-214, requires the Board of Education to “prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities” between the ages of two and twenty-one, inclusive. The program developed by the Board of Education must “be designed to ensure that all children with disabilities have available to them a free and appropriate education.” The *Code of Virginia*, at § 22.1-16, authorizes the Board of Education to “promulgate such regulations as may be necessary to carry out its powers and duties...”

When implementing a program of special education services, Virginia must comply with the federal requirements outlined in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), and its federal implementing regulations, at 34 C.F.R. Part 300, to continue to be eligible for federal special education funding. In 2008-2009, Virginia expects to receive \$276.6 million in federal special education funding.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The revision of these regulations is essential to protect the health, safety, and welfare of students with disabilities in Virginia. By ensuring that Virginia’s state special education regulations are aligned with federal requirements, VDOE will ensure that students with disabilities in the Commonwealth have available a free appropriate public education and are afforded the procedural safeguards guaranteed by federal law.

The revision process will also strive to ensure consistency by incorporating requirements of the *Code of Virginia* and other regulations that apply to the provision of special education in Virginia, and strive to clarify areas of ambiguity from the previous set of regulations.

Finally, the revision of the state special education regulations is required to ensure compliance with the IDEA 2004, and with its federal implementing regulations, at 34 C.F.R. Part 300, effective October 13, 2006. Alignment with these federal mandates will ensure that students with disabilities in Virginia may continue to benefit from federal special education funding, which will total approximately \$276.6 million in 2008-2009.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

To clarify existing areas of ambiguity and to ensure compliance with the federal requirements outlined in IDEA 2004, and its federal implementing regulations, the current regulations (8 VAC 20-80) are being repealed and concurrently replaced with new regulations (8 VAC 20-81). There are a number of substantive changes in the regulations, including the following areas: 1) Functions of the Virginia Department of Education (VDOE); 2) Responsibilities of local school divisions and state-operated programs; 3) Qualifications for Educational Interpreters; 4) Child find; 5) Eligibility determinations; 6) The development, review and revision of a student’s individualized education program (IEP); 7) Parentally-placed private school students; 8) Discipline; 9) Procedural safeguards, including the appointment of surrogate parents and dispute resolution 10) Local educational agency administration and governance; 11) Funding; and 12) The requirements regarding highly qualified personnel.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The proposed revisions to the state regulations governing special education are advantageous to the public, the agency and the Commonwealth in that the proposed revisions ensure compliance with changes in federal and state laws and regulations, which impact the provision of special education and related services in Virginia. Compliance with new federal mandates, as outlined in IDEA 2004 and its federal implementing regulations, will ensure Virginia’s continued eligibility for federal special education funding. In 2008-2009, federal funding will provide approximately \$244.8 million in direct funding to local school divisions to support special education programs, and provide an additional \$31.8 million to support training and technical assistance efforts to local school divisions, and funding for compliance and monitoring activities. In addition, the proposed revisions will ensure that students with disabilities have available a free appropriate public education (FAPE) and are afforded the procedural protections guaranteed by federal law. Finally, the proposed changes incorporate recommendations to improve the state regulations governing special education, clarifying previous areas of ambiguity.

There are no identifiable disadvantages to the general public, the agency, or the Commonwealth for revising these regulations.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Note: These proposed regulations were readopted by the Board of Education on May 28, 2009 with no changes from those adopted at the September 28, 2008 Board of Education meeting.

* Denotes a substantive change.

Section number	Requirement at proposed stage	What has changed	Rationale for change
8 VAC 20-81 et seq.	* References regarding the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton (VSDB-H).	Deleted all references to VSDB-H, and made necessary grammatical changes, resulting from the deletions.	The Board of Education officially closed VSDB-H on July 1, 2008.
	The term “mental retardation”	All references to “mental retardation” have been changed to “intellectual disability.” This includes reordering certain provisions to appear alphabetically under “intellectual disability” rather than “mental retardation,” such as in 8 VAC 20-81-10, and 8 VAC 20-80-80.	This revision was made in response to actions taken during the 2008 Session of the Virginia General Assembly, and significant public comment.
	The term “emotional disturbance”	All references to “emotional disturbance” have been changed to “emotional disability.”	The revision was made in response to significant public comment.
	The term “LEA”	All references to “LEA” were changed to “local educational agency.”	The revision was made for consistency.
	Citations, cross-references, and typographical errors	Throughout the document, as appropriate, citations and cross-references were corrected or added, and typographical errors were addressed.	The revisions were made to ensure clarity, correct typographical errors, and to comply with guidance from US DOE.
Foreword	4 th paragraph	Deleted “These references are found in the right margin.”	Stylistic change.
	6 th paragraph	Corrected included telephone number.	Correct typographical error.
Preamble	Preamble	A new paragraph was added to the	A public comment noted

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		end of the preamble, expanding then language regarding the purpose of these regulations.	the need for additional language to provide an overview of the regulations and to clarify their purposes.
8 VAC 20-81-10	* Definition of "Alternate assessment"	Added language: "means the state assessment program, <u>and any school division-wide assessment to the extent that the school division has one</u> , for measuring student performance against alternate achievement standards...."	The US DOE, during its review, noted that children with significant intellectual impairments must have available an alternative for measuring student performance against alternate achievement standards for not only the state assessment programs, but also, to the extent applicable, division-wide assessments.
	* Definition of "Autism"	"A child who manifests the characteristics of autism after age three could be diagnosed <u>identified</u> as having autism if the criteria in this definition are satisfied."	To comply with the federal regulatory requirement.
	* Definition of "Change in placement"	Inserted : " <u>A 'change in placement' also means any change in the educational setting for a child with a disability that does not replicate the elements of the educational program of the child's previous setting.</u> "	In response to public comments, the change was added for clarity.
	* Definition of "Child with a disability"	Inserted: " <u>This also includes developmental delay if the LEA recognizes this category as a disability in accordance with 8 VAC 20-81-80 N.3.</u> "	In response to public comments, the change was added to clarify that a child who is identified as developmentally delayed is a child with a disability if the LEA permits "Developmental Delay" to be an eligibility category.
	* Definition of "Cognitive disability"	Deleted the term and the definition.	Given the change from "mental retardation" to "intellectual disability," this term, and its cross-reference to "mental retardation" is no longer necessary.

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	* Definition of "Comprehensive Services Act" (CSA)	Revised definition to state that the CSA "establishes the collaborative administration and funding system that addresses and funds for services for certain at-risk youths and their families."	Revised to comply with the language and intent of the CSA.
	* Definition of "Dangerous weapon"	Revised the language: "does not include a pocket knife with a blade of less than 2½ <u>3</u> inches in length."	The revision is to comply with the <i>Code of Virginia</i> , which is more stringent than the standard of 2 ½ inches, which is included in federal law.
	* Definition of "Developmental Delay"	Revised the age of eligibility: "Developmental delay" means a disability affecting a child ages two by September 30 through [five <u>six</u> ,] inclusive:...."	The revision was made in response to public comments.
	Definition of "Free appropriate public education" (FAPE)	Inserted language: FAPE means special education and related services that "Include <u>an appropriate preschool, elementary school, middle school or secondary school education in Virginia</u> ".	The revision was made to comply with federal regulatory language.
	Definition of " Functional behavioral assessment" (FBA)	Inserted language that a FBA "may be include <u>include a review of existing data or new testing data or evaluation as determined by the IEP team.</u> "	In response to public comments, the change was added for clarify that an FBA could include the completion of a new evaluation.
	* Definition of "Impartial special education hearing officer"	Inserted a definition of the term, which " <u>means a person, selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia to conduct a due process hearing.</u> "	Included the term to distinguish the special education hearing officer from others included on the general list of hearing officers maintained by the Supreme Court of Virginia.
	* Definition of "Implementation plan"	Reinserted the term with a revised definition, noting the term " <u>means the plan developed by the local education agency designed to operationalize the decision of the hearing officer in cases that are fully adjudicated.</u> "	In response to public comment, the role of implementation plans was reinserted to ensure that LEAs comply with hearing officers' decisions. However, to address concerns regarding duplicative

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			processes, an implementation plan is now only required for fully adjudicated decisions, rather than for decisions of the hearing officer that simply dismisses a case or identify an agreement between the parties.
	* Definition of “Interpreting services”	Revised the definition to note that it includes “cued <u>speech/language transliteration services</u> ” and to indicate that “interpreting services” includes interpreting services for children who are deaf-blind. Also inserted: “ <u>A child who is not deaf or hard of hearing, but who has expressive or receptive language needs may receive sign language services if directed by the child’s IEP.</u> ”	In response to public comments, the changes were added for clarity, including which students are eligible to receive interpreting services.
	* N/A	Inserted new definition for “Long-term placement,” which states, “ <u>‘Long-term placement’ if used in reference to state-operated programs as outlined in 8VAC 20-81-30 H. means those hospital placements which are not expected to change in status or condition because of the child’s medical needs.</u> ”	In response to public comments, changes were added to 8 VAC 20-81-30. For clarity, a new definition was also inserted.
	Definition of “National Instructional Materials Accessibility Standard”	Inserted language: “ <u>‘NIMAS’ means the standard established by the United States Secretary of Education to be used in the preparation of electronic files...</u> ”	Language to comply with federal regulatory requirements.
	Definitions: “Orthopedic impairment” “Other Health Impairment” “Traumatic Brain Injury”	Reinserted “ <u>that adversely affects a child’s educational performance</u> ” into the definitions for each of these terms.	The language, which appears as part of the federal definition for each of the terms, was included only in 20-81-80 of the proposed regulations as part of the identified eligibility criteria. Reinserted the language into the definition section upon guidance from the US DOE to ensure clarity.

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	* Definition of "Parent"	<p>Inserted: "Parent" may also mean <u>"A minor who is emancipated under § 16.1-333 of the Code of Virginia."</u></p> <p>Inserted: <u>"A validly married minor who has not pursued emancipation under § 16.1-333 of the Code of Virginia may assert implied emancipation based on the minor's marriage record, and thus, assume responsibilities of 'parent' under this chapter."</u></p>	Based on guidance from the Office of the Attorney General, and to ensure clarity regarding the issue, if a child with a disability is emancipated in accordance with state law, or if the minor child with a disability is married, they should be permitted all rights and protections under IDEA, which are typically afforded to the parent of a child with a disability.
	* Definition of "Psychological services"	Inserted language to clarify that "psychological services" includes "consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, <u>direct observation</u> , and behavioral evaluations".	Language added to comply with the federal definition of the term.
	* Definition of "Related services"	Inserted language to clarify that "related services" includes <u>"early identification and assessment of disabilities in children"</u> .	Language added to comply with the federal definition of the term.
	* Definition of "Social work services in Schools"	Inserted: <u>"A local educational agency, in its discretion, may expand the role of a school social worker or visiting teacher beyond those services identified in this definition, as long as the expansion is consistent with other state laws and regulations, including licensure."</u>	The definition in the proposed regulations mirrors the federal definition. In response to public comment, inserted language to clarify that in Virginia, school social workers may have a broader role.
	Definition of "Special education hearing officer"	The term has the same meaning as the term <u>"impartial hearing officer"</u> as that term is used in IDEA and its federal implementing regulations.	Added the word "impartial" to align with federal terminology.
	* Definition of "Specific Learning Disability"	Reinserted the term "emotional disabilities": "Specific learning disability does not include learning problems that are primarily the result of ...of intellectual	The term was inadvertently deleted from the definition of "Specific Learning Disability" in the

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		disabilities; <u>of emotional disabilities</u> ; of environmental, cultural, or economic disadvantage.	proposed regulations.
8 VAC 20-81-20	* Subsection 1. e. stated, "Are in special education and related services...."	"Are in-receiving special education and related services...."	As noted in public comments, special education and related services are services and not a location.
	Subsection 5 stated, "Ensure that each local educational agency takes steps for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in the local educational agency...."	Inserted language: "5. Ensure that each local educational agency takes steps for its children with disabilities to have available to them the variety of educational programs and services available to nondisabled children in the <u>areas served by</u> the local educational agency...."	Language inserted to comply with the federal regulatory requirements.
	* Subsection 7 stated, "Prepare and submit for public hearing; receive comment from the public, members of the state special education advisory committee and private special education schools; and place on file with the U.S. Department of Education, final policies and procedures to ensure that the conditions of state eligibility for funding under the Act are met."	Replaced subsection 7 with new language: " <u>Prior to the adoption of any policies and procedures to comply with the Act, or submitting a state plan in accordance with the Act, VDOE shall ensure that public hearings are convened, adequate notice of the hearings are provided, and an opportunity for comment is made available to the public, members of the state special education advisory committee, and private special education schools.</u> "	Language revised to comply with federal regulatory requirements.
	* Subsection 11 outlines VDOE's responsibilities to ensure LEAs comply with state and federal laws and regulations regarding special education.	Revised 11 a to state, "a. Administer a special education due process hearing system that provides procedures for training of special education hearing officers, processing requests for a hearing, appointment of evaluating special education hearing officers, <u>and</u> management and monitoring of hearings, and administration of the hearing system. "	In response to public comments, the Supreme Court of Virginia will continue to administer the due process hearing system.
	* Subsection 23 outlines VDOE's responsibilities	Revised language: "Report and certify annually to the United	Based upon guidance from US DOE, revised

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	relative to collecting Child Count data.	States Department of Education the number of children with disabilities...on any a date between October 1 and December 1 of each year <u>determined by the Superintendent of Public Instruction or designee.</u> "	the language to require that Child Count data be collected on a specific date each year. The Superintendent of Public Instruction or designee will determine the date, but it will be between October 1 and December 1 each year.
	* Subsections 24 and 25 outline VDOE's responsibilities regarding overidentification and disproportionality.	<p>Language was inserted into 24 a and 25:</p> <p>"24. Ensure that a practical method is developed and implemented... with respect to:</p> <p style="padding-left: 20px;">a. The identification of children as children with disabilities, including the identification of <u>children as children with disabilities in accordance with a particular impairment described in 8VAC20-81-10, "Child with a disability"; ...</u></p> <p>25. Ensure that in the <u>case of the determination of significant disproportionality, as outlined in subdivision 24 of this section</u>, the Virginia Department of Education shall:</p> <p style="padding-left: 20px;">a. Reviews <u>review</u> and, if appropriate, revises <u>provide for the revision of</u> the policies, procedures, and practices used by the local educational agency....</p> <p style="padding-left: 20px;">b. Requires <u>require</u>...</p> <p style="padding-left: 20px;">c. Requires <u>require</u>...</p>	Based on guidance from US DOE, the language was modified to more closely align with federal regulatory requirements.
	Subsection 28 outlines VDOE's responsibilities regarding if it provides direct services to children with disabilities.	Revised 28 a: "The Virginia Department of Education shall <u>may</u> use payments that would otherwise have been available to a local educational agency <u>under Part B of the Act</u> to provide special education services directly to children with disabilities residing in the local school division or served by a state-operated program in accordance with the conditions of § 1413 (h) of the Act <u>the excess</u>	This revision is made to align with federal regulatory requirements. Inadvertently, the correction was not included in the proposed regulations.

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		<u>cost requirements as outlined in 8 VAC 20-81-260.</u>	
8 VAC 20-81-30	B 2: "Children with disabilities who are homeless;"	Revised B 2: "Children with disabilities who are homeless, <u>in accordance with the provisions of the McKinney-Vento Homeless Assistance Act (42 USC §11431 et seq.);</u>	Based on public comment, additional language was inserted to clarify that LEAs must also comply with the requirements of the McKinney-Vento Homeless Assistance Act when working with students with disabilities who are homeless.
	* N/A	Inserted a new provision in subsection C: "Every child with a disability is deemed to reside in a school division when:...7. <u>The child is living in the school division not solely for school purposes, as a validly married minor who has not pursued emancipation under §16.1-333 of the Code of Virginia but who asserts implied emancipation based on the minor's marriage record.</u>	Based on guidance from the Office of the Attorney General, language was inserted to clarify which LEA is responsible for the provision of FAPE to a child with a disability who has been emancipated in accordance with the <i>Code of Virginia</i> .
	* In subdivisions E 3 through E 8, the proposed regulations outlined which LEA was responsible for the provision of FAPE to a child with a disability based on the child's residency. Each provision included an exception that if the child was placed in a state-operated program (SOP), the SOP was responsible for the provision of FAPE rather than the LEA of residence.	In subdivisions E 3 through E 8, deleted the phrases: "unless the child is in a state-operated program"; "unless the adult child with a disability is in a state-operated program"; and "unless the adult child is in a state operated program".	In response to public comments, the revisions were made to ensure that for children with disabilities who are placed long-term in a SOP for noneducational reasons, the child's LEA of residence continues to be responsible for the provision of FAPE in the least restrictive environment.
	* Subdivision E 7: "7. If the child is aged 18 or older, who has not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to	Revised subdivision E 7: "7. If the child is aged 18 or older, who has not been declared legally incompetent or legally incapacitated by a court of competent jurisdiction and for whom the court has not appointed a guardian to make decisions, the adult child is a resident of the	As noted above, in response to public comments, the phrase "unless the adult child is in a state-operated program" was deleted. The additional revision was made to comply with

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	<p>make decisions, the adult child is a resident of the division where the guardian resides, unless the adult child is in a state-operated program. The adult child's residence is the fixed home to which the adult child will return following the child's return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time."</p>	<p>division where the guardian resides, unless the adult child is in a state-operated program. The <u>the</u> adult child's residence is the fixed home to which the adult child will return following the child's return from a facility and at which the adult child intends to stay. No adult child shall have more than one residence at a time."</p>	<p>the <i>Code of Virginia</i> and to mirror the current provision.</p>
<p>* N/A</p>		<p>Inserted a new provision in subsection E: <u>"9. If placed in a sponsored residential home, licensed in accordance with 12VAC 35-105-10 et seq., the child is a resident of the division where the parent(s) reside."</u></p>	<p>The new provision was added to clarify which LEA is responsible for FAPE given this non-educational placement option is expanding in Virginia.</p>
	<p>* "H. Each state-operated program shall ensure that children with disabilities, aged two to 21, inclusive, in that institution have the right to a free appropriate public education."</p>	<p>Revised the language in subsection H: <u>"Each state-operated program shall ensure that the requirements in this chapter are applied to children with disabilities, aged two to 21, inclusive, in that institution</u>have the right to a free appropriate public education. <u>1. For children with disabilities who are placed in a state-operated program as a long-term placement, the local educational agency of the parent's residence remains responsible for ensuring that the child receives a free appropriate public education.</u> <u>2. The state-operated program shall ensure that the local educational agency of the parent's residence is advised of the child's admission, status, and meetings associated with the child receiving a free appropriate public education.</u></p>	<p>In response to public comments, the revisions were made to ensure that for children with disabilities who are placed long-term in a SOP for noneducational reasons, but who can be served in the LRE in the LEA of residence, the child's LEA of residence continues to be responsible for the provision of FAPE. The revision also outlines the SOPs responsibilities for these students.</p>
<p>8 VAC 20-81-40</p>	<p>* Subdivision A 2 stated, "b. Special education</p>	<p>Deleted language: "b. Special education teachers who are the</p>	<p>Based on guidance from US DOE, special education teachers must</p>

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	<p>teachers who are the teachers of record for instructing one or more federal core subjects to students with disabilities shall be highly qualified.”</p>	<p>teachers of record for instructing one or more federal core subjects to students with disabilities shall be highly qualified.”</p>	<p>be highly qualified regardless of whether or not the teacher is providing instruction in one or more of the federal core subjects.</p>
	<p>* Subsection E outlined the requirements for Educational interpreting services.</p>	<p>The subsection was revised as follows: E. Educational interpreting services. 1. The qualification requirements for personnel providing interpreting services <u>for children who are deaf or hard of hearing</u> are as follows: a. Personnel providing educational interpreting services for children using sign language shall: (1) have a <u>valid</u>...(VQAS) Level III, or (2) a passing score on the... (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state <u>qualification</u> or national certification (National Interpreter Certification<u>excluding Certificate of Deaf Interpretation</u>) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III. Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state. Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent have one year to reach the required qualifications. b. Personnel providing educational interpreting services for children using cued speech/language shall have a Virginia Quality Assurance Screening Level III for cued speech/language or hold a</p>	<p>In response to public comment, revisions were made to the qualifications of educational interpreters to provide LEAs and educational interpreters with flexibility, while ensuring that children with disabilities are provided with quality interpreting services.</p>

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		<p><u>national</u> Transliteration Skills Certificate from the...(TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.</p> <p>c. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance Screening's written assessment of the Code of Ethics and hold a national Oral Interpreter Credential (OIC).</p> <p>2. Personnel who provide interpreting services for children who use sign language or cued speech/ language and who do not hold the required qualifications may be employed in accordance with the following criteria:</p> <p>a. Personnel shall have a valid Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard of Hearing; or</p> <p>b. Personnel shall have a passing score on the EIPA Written Test and a minimum score of 2.5 on the EIPA Performance Test upon hiring date in any local educational agency in Virginia.</p> <p>3. The following qualification requirements for personnel providing interpreting services for students who are deaf or hard of hearing will become effective in 2010:</p> <p>a. Personnel providing educational interpreting services for children using sign language shall hold</p> <p>(1) a valid Virginia Quality Assurance Screening (VQAS) Level III; or</p> <p>(2) a passing score on the Educational Interpreter Performance Assessment (EIPA)</p>	

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		<p><u>Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.</u></p> <p><u>(3)Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state.</u></p> <p><u>(4)Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent shall have two years from the date of hire to reach the required qualifications.</u></p> <p><u>b. Personnel providing educational interpreting services for children using cued speech/language shall have a valid Virginia Quality Assurance Screening Level III for cued speech/language or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.</u></p> <p><u>(1)Under no circumstances shall local educational agencies or private special education schools hire educational interpreters to provide cued speech services who hold qualifications below a VQAS Level I or the equivalent from another state.</u></p> <p><u>(2)Educational Interpreters to provide cued speech hired with a VQAS Level I or the equivalent have three years from the date of hire to reach the required qualifications.</u></p> <p><u>c. Personnel providing</u></p>	

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p><u>educational interpreting services for children requiring oral interpreting shall hold a national Oral Transliteration Certificate (OTC) or equivalent recognized by the Virginia Department of Deaf and Hard of Hearing.</u></p> <p>4. <u>For a child who is not deaf or hard of hearing but for whom sign language services are specified in the IEP to address expressive or receptive language needs, the sign language services shall be provided by an individual meeting the requirements determined appropriate by the local educational agency.</u></p>	
8 VAC 20-81-50	<p>* Subdivision A 3 f: “f. The local school division shall consult with appropriate representatives of private school children with disabilities, as well as home-instructed or home-tutored children with disabilities, on how to implement the child find and evaluation activities.”</p>	<p>Revised subdivision A 3 f: “f. The local school division shall consult with appropriate representatives of private school children with disabilities, as well as home-instructed or home-tutored children with disabilities, <u>and representatives of parents of parentally-placed private school children with disabilities,</u> on how to implement the child find and evaluation activities.”</p>	<p>Upon guidance from US DOE, revisions made to comply with federal regulatory requirements.</p>
	<p>* D. Each school division shall have procedures to review records, assess whether the child was provided appropriate instruction, and review other performance evidence of the child referred through a screening process, or by school staff, the parent(s), or other individuals.</p> <p>1. The local school division’s procedures shall ensure that if a child received early intervening services and/or other scientific research-based interventions, these</p>	<p>D. <u>Referrals.</u></p> <p>1. Each school shall have procedures to <u>process in a timely manner all referral requests for a child suspected of having a disability.</u></p> <p>2. <u>Each school shall have a team to review records and other performance evidence of the child being referred in order to make recommendations to meet the child’s educational and behavioral needs.</u></p> <p>a. <u>The team shall include:</u></p> <p>(1) <u>The referring source, as appropriate (except if inclusion of a referring source would breach the confidentiality of the</u></p>	<p>In response to public comment, a framework for a school-based structure for referrals was reinserted, including timelines, required team members, and procedures for the referral process. However, the revisions continue to permit LEAs the flexibility to use scientific, response to intervention methods with procedural protections for the child suspected of having a disability intact.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>services do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services. Such procedures shall include:</p> <ul style="list-style-type: none"> a. tracking and reviewing timelines; b. instructions on maintaining data-based documentation reflecting the child's progress during instruction in the child's area(s) of difficulty; and c. written progress reports to the child's parent(s) at reasonable intervals for documenting the progress of the intervention strategies to address the child's learning, behavior, communication, or development. <p>2. If the child has not made adequate progress after an appropriate period of time, during which the conditions of providing appropriate high-quality, research-based instruction in general education settings delivered by qualified personnel and data-based documentation requirements have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be made to the special education administrator or designee.</p> <p>E. Each school division shall have procedures to process in a timely manner all referral requests for a child suspected of having a disability.</p>	<p><u>child):</u></p> <ul style="list-style-type: none"> <u>(2) The principal or designee;</u> <u>(3) At least one teacher; and</u> <u>(4) At least one specialist.</u> <p><u>b. Other members may be included according to the school division's procedures, or when the school division determines that the special needs of the child identified in the referral request requires additional information that should be provided by individuals with specialized training or specific knowledge.</u></p> <p><u>c. One member of the team must be knowledgeable about alternative interventions and about procedures required to access programs and services that are available to assist with children's educational needs.</u></p> <p><u>3. Children may be referred through a screening process, or by school staff, the parent(s), or other individuals.</u></p> <ul style="list-style-type: none"> <u>a. The referral may be in written, electronic, or oral form to the principal or designee of the school the child attends, or if initially enrolling in the school division, in the school in the parent's district.</u> <u>b. If the referral is made to the special education administrator or designee, the administrator shall within 3 business days:</u> <ul style="list-style-type: none"> <u>(1) initiate the evaluation-eligibility process in accordance with 8VAC20-81-60; -70; -80;</u> <u>(2) require that the school-based team review and respond to the request; or</u> <u>(3) deny the request.</u> <u>(a) If the request is denied, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's</u> 	

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>1. The local school division's procedures shall ensure that the processing of such referrals do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.</p> <p>2. If the school division decides not to evaluate, prior written notice, in accordance with 8 VAC 20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing procedures.</p>	<p><u>right to appeal the decision through the due process hearing procedures.</u></p> <p>4. In reviewing the child's performance, the team may use a <u>process based on the child's response to scientific, research-based interventions or other alternative research-based procedures.</u></p> <p>a. <u>The team shall ensure that these interventions are documented and do not needlessly delay a child suspected of having a disability from being evaluated for special education and related services.</u></p> <p>b. <u>If the child has not made adequate progress after an appropriate period of time during the implementation of the interventions, the team shall refer the child to the special education administrator or designee for an evaluation to determine if the child needs special education and related services.</u></p> <p>5. <u>Timelines for Referral Process</u></p> <p>a. <u>The team shall meet within 10 business days following the receipt of the referral.</u></p> <p>b. <u>The team shall refer the child to the special education administrator or designee within 3 business days if the team determines that the child should be referred for an evaluation for special education and related services.</u></p> <p>c. <u>If the team decides not to refer for an evaluation for special education and related services, prior written notice, in accordance with 8VAC20-81-170 shall be given to the parent(s), including the parent's right to appeal the decision through the due process hearing.</u></p> <p>6. <u>Actions by the team shall be documented in writing and shall</u></p>	

Section number	Requirement at proposed stage	What has changed	Rationale for change
8 VAC 20-81-60	<p>* Subsection A: 1. Referrals may be made by any source including school staff, a parent(s), the Virginia Department of Education, any other state agency, or other individuals.</p> <p>Subsection B: 1. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child with a disability, regardless of the source, the special education administrator, or designee, shall:</p>	<p><u>include information upon which a decision was based.</u></p> <p>Revised subsection A: 1. Referrals may be made by any source including school staff, a parent(s), the Virginia Department of Education, any other state agency, or <u>other individuals, or a school-based team in accordance with 8VAC20-81-50 5.b. ...</u></p> <p>Insert new subdivision A 3: <u>3. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child suspected o having a disability, from a source other than the school-based team, the special education administrator, or designee, shall:</u> <u>a. initiate the initial evaluation procedures under subsection B;</u> <u>b. refer the child to the school based team to review and respond to the request under 8VAC20-81-50 D.3.b.;or</u> <u>c. deny the request, and provide prior written notice in accordance with 8VAC20-81-170.</u></p> <p>Subsection B: 1. Upon receipt of the referral for initial evaluation for the provision of special education and related services to a child with a disability, regardless of the source, the <u>The</u> special education administrator, or designee, shall:</p>	<p>In response to public comment, a framework for a school-based structure for referrals was reinserted into 8 VAC 20-81-50. Language was changed in this section as a result of changes to 8 VAC 20-81-50.</p>
	<p>* Subdivision B 1 g: “Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days after the parent has provided written consent to the evaluation process.”</p>	<p>Revised Subdivision B 1 g: “Ensure that all evaluations are completed and that decisions about eligibility are made within 65 business days after the parent has provided written consent to the <u>evaluation process of the receipt of the referral by the special education administrator or designee, including if the special education administrator or designee routes the referral to the</u></p>	<p>In response to significant public comment, the trigger for the timeline for an initial evaluation was revised from the date of consent, to the date of the receipt of the referral by the special education administrator or designee. In addition, for clarity, a timeline was inserted for the routing of</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<u>school-based committee for review and action.</u> ”	a referral to the school-based team, outlined in 8 VAC 20-81-50.
8 VAC 20-81-70	The term “test”.	The term “test” was replaced with the term “assessment” throughout the section.	Revised to comply with federal regulatory language.
	* N/A	Inserted new provision B 1 b (4): “b. On the basis of that review and input from the child's parent(s), identify what additional data, if any, are needed to determine: <u>...(4) Whether the child needs or continues to need special education and related services;...</u> ”	Revised to comply with federal regulatory language.
	Subdivision F 5: “5. Requirements if additional data are not needed: a. If the team determines that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency shall provide the child's parent(s) with written prior notice, including information regarding: (1) the determination and the reasons for it; and (2) the right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs. b. The local educational agency is not required to conduct the evaluation to gather additional information to determine whether the child continues to have a disability and to determine the child's educational needs, unless the child's parent(s) requests the	Deleted language as subdivision F 5, and inserted the same language as a new subdivision B 4.	The federal regulatory requirements apply to both initial evaluations and reevaluations. Therefore, they were consolidated together in subsection B.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>evaluation for these specific purposes. c. The child’s parent(s) has the right to resolve the issue through the dispute resolution options of mediation or due process, as described in this chapter.</p>		
	<p>* Subsection C: 1. Tests and other evaluation materials used to assess a child under this chapter are selected and administered so as not to be discriminatory on a racial or cultural basis; 2. Each assessment and other evaluation materials shall be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so. ... 6. Any standardized tests that are given to a child: a. Have been validated for the specific purpose for which they are used; and b. Are administered by knowledgeable and trained personnel in accordance with the instructions provided by the producer of the tests.</p>	<p>Revised subsection C: 1. Tests <u>Assessments</u> and other evaluation materials used to assess a child under this chapter are: a. selected and administered so as not to be discriminatory on a racial or cultural basis; b. Each assessment and other evaluation materials shall be provided and administered in the <u>child’s native</u> language and <u>in the</u> form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so; c. <u>are used for the purposes for which the assessments or measures are valid and reliable;</u> <u>and</u> d. <u>are administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of the assessments.</u></p>	<p>Based on guidance from US DOE, the language in subsection C was revised to comply with federal regulatory requirements.</p>
	<p>* Subsection D: “A written copy of the evaluation report shall be provided at no cost to the parent(s). The report shall be available to the parent(s) no later than two business</p>	<p>“D. A written copy of the evaluation report shall be provided at no cost to the parent(s). The report <u>evaluation report(s) shall be available to the parent(s) no later than two business days before the meeting to determine eligibility.</u></p>	<p>In response to public comment, revisions were made to clarify each LEA’s responsibilities relative to the provision of evaluation reports.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>days before the meeting to determine eligibility.”</p>	<p><u>1. A written copy of the evaluation report(s) shall be provided to the parent(s) prior to or at the meeting where the eligibility group reviews the evaluation report(s) or immediately following the meeting, but no later than 10 days after the meeting.</u></p> <p><u>2. The evaluation report(s) shall be provided to the parent(s) at no cost.</u></p>	
	<p>Subdivisions F 3, F 4, and F 6: “3. As part of a reevaluation, the local educational agency shall ensure that a group comprised of the same individuals as an IEP team, and other qualified professionals, as appropriate follow the provisions of subsection B. of this section, in determining:</p> <ul style="list-style-type: none"> a. whether the child continues to have a disability; b. the child's educational needs, including the present levels of academic achievement and related developmental needs of the child; c. whether the child continues to need special education and related services; d. whether any additions or modifications to the special education and related services are needed to meet the measurable annual goals set out in the child's IEP and to participate, as appropriate, in the general education 	<p>Replaced previous subdivision F 3 with the following:</p> <p><u>“The local educational agency shall conduct a reevaluation in accordance with the requirements of subsection B of this section.”</u></p> <p>Deleted subdivisions F 4 and F 6.</p>	<p>The federal regulatory requirements apply to both initial evaluations and reevaluations. Therefore, they were consolidated together in subsection B.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>curriculum.</p> <p>4. The local educational agency shall administer tests and other evaluation materials, in accordance with subsection B of this section, as may be needed to produce the data identified in subdivision 3. of this subsection.</p> <p>...</p> <p>6. This process is considered the evaluation if no additional data are needed.</p>		
	<p>* Subsection H 2: "...the reevaluation process, including eligibility determination, shall be completed in 65 business days from the date of the parent's consent to the evaluation."</p>	<p>Revised subsection H 2: "...the reevaluation process, including eligibility determination, shall be completed in 65 business days from the date of the parent's consent to <u>of the receipt of the referral by the special education administrator or designee</u> for the evaluation."</p>	<p>In response to strong public comment, the trigger for the timeline for an initial evaluation was revised from the date of consent, to the date of the receipt of the referral by the special education administrator or designee.</p>
<p>8 VAC 20-81-80</p>	<p>Subsection C: "...If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110...."</p>	<p>Revised subsection C: "...If a determination is made that a child has a disability and needs <u>requires</u> special education and related services, an IEP shall be developed in accordance with the requirements of 8VAC20-81-110...."</p>	<p>This section was substantially revised</p> <ul style="list-style-type: none"> • To comply with federal regulatory requirements; • To comply with public comment; and • To provide clarification.
	<p>* Subdivision D 3 through D 5:</p> <p>"3. Observation. a. At least one member of the eligibility group other than the child's current teacher, who is trained in observation, shall observe the child and the learning environment, including the general education classroom setting, to</p>	<p>Revised subdivision D 3 through D 5:</p> <p>"3. Observation. a. At least one member of the eligibility group other than the child's current teacher, who is trained in observation, shall observe the child and the learning environment, including the general education classroom setting to document academic performance and behavior in the areas of difficulty. In the case of</p>	<p>In addition, references to the DSM were deleted, and language, which previously implied that school personnel could "diagnose" children with disabilities, was removed.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>document academic performance and behavior in the areas of difficulty. In the case of a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.</p> <p>b. The local educational agency shall:</p> <p>(1) Have at least one member of the eligibility team conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained, consistent with the requirements of 8 VAC 20-81-170.</p> <p>(2) Ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.</p> <p>(3) Include information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation.</p> <p>4. A child shall not be determined to be eligible...if the child does not otherwise meet the eligibility criteria, and the determinant factor is:</p> <p>a. Lack of appropriate</p>	<p>a child of less than school age or out of school, a group member shall observe the child in an environment appropriate for a child of that age.</p> <p><u>ba.</u> The local educational agency shall:</p> <p>(1) Have at least one member of the eligibility team conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained, consistent with the requirements of 8 VAC 20-81-170.</p> <p><u>(2) Ensure</u> ensure that the child is observed in the child's learning environment (including the general education classroom setting) to document the child's academic performance and behavior in the areas of difficulty.</p> <p>(3) Include information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation.</p> <p>b. The eligibility group, in determining whether a child is a child with a disability shall:</p> <p><u>(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or</u></p> <p><u>(2) Have at least one member of the eligibility group conduct an observation of the child's academic performance in the general education classroom after the child has been referred for an evaluation and parental consent has been obtained consistent with the requirements of 8VAC20-81-170.</u></p> <p><u>c. In the case of a child of less than school age or out of school,</u></p>	

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>instruction in reading... b. lack of appropriate instruction in math; or c. limited English proficiency.</p> <p>5. The documentation of the determination of eligibility shall include a statement of:...</p> <p>e. The instructional strategies used and the student-centered data collected if a response to scientific, research-based intervention process was implemented and whether the child does not achieve commensurate with the child's age....</p> <p>f. For identification of learning disabilities, whether there are strengths and weaknesses in performance or achievement or both, or there are strengths and weaknesses in performance or achievement or both relative to intellectual development in one or more of the areas listed in subsection K. of this section.”</p>	<p><u>a group member shall observe the child in an environment appropriate for a child of that age.</u></p> <p>4. A child shall not be determined to be eligible...if the child does not otherwise meet the eligibility criteria, and <u>or</u> the determinant factor is:</p> <p>a. Lack of appropriate instruction in reading... b. lack of appropriate instruction in math; or c. limited English proficiency.</p> <p>5. <u>The local educational agency shall provide the parent with a copy of the documentation of the determination of eligibility at no cost. The documentation of the determination of eligibility This documentation shall include a statement of:...</u></p> <p>e. The instructional strategies used and the student-centered data collected if <u>the child has participated in</u> a response to scientific, research-based intervention process was implemented and whether the child does not achieve commensurate with the child's age. ...</p> <p>f. For identification of <u>a child with a specific learning disabilities disability, whether consistent with the requirements of subdivision T.2.a. and T.2.b. of this section, the child does not achieve adequately for the child's age or to meet Virginia-approved grade-level standards; and</u> (1) <u>the child does not make sufficient progress to meet age or Virginia-approved grade-level standards; or]</u> [(2) <u>the child exhibits a pattern of</u> there are strengths and weaknesses in performance, or achievement, or there are strengths and weaknesses in performance or achievement or both relative to <u>age, Virginia-approved grade-level standards</u></p>	

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p>or] intellectual development in one or more of the areas listed in subsection K of this section. <u>g. For identification of a child with a specific learning disability, the group's determination is consistent with the requirements of subdivision T.2.c. of this section.</u>"</p>	
	<p>* Subsections H and I: "H. The characteristics of each of the disabilities listed in this section shall have an adverse effect on educational performance and make it necessary for the child to have special education to address the needs of the child that result from the child's disability and to ensure access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. For children with developmental delay, ensuring access to the general curriculum means ensuring the child's access to the general educational activities for this age group.</p> <p>I. The Virginia Department of Education adopts criteria for determining whether a child has a disability by using the applicable determination of eligibility criteria for all children suspected of having a disability and does not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a disability."</p>	<p>Revised subsections H and I: "H. The characteristics of each of the disabilities listed in this section shall have an adverse effect on educational performance and make it necessary for the child to have special education to address the needs of the child that result from the child's disability and to ensure access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. For children with developmental delay, ensuring access to the general curriculum means ensuring the child's access to the general educational activities for this age group. <u>H. For all children suspected of having a disability, local educational agencies shall:</u></p> <ol style="list-style-type: none"> <u>1. use the criteria adopted by the Virginia Department of Education, as outlined in this section, for determining whether the child has a disability; and</u> <u>2. have documented evidence that by reason of the disability, the child needs special education and related services.</u> <p>I. The Virginia Department of Education adopts criteria for determining whether a child has a disability by using the applicable determination of eligibility criteria for all children suspected of having a disability and does not require the use of a severe discrepancy between intellectual ability and achievement for determining</p>	

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>* Subsections L through S:</p> <p>Outlined eligibility criteria for each of the following eligibility categories:</p> <ul style="list-style-type: none"> • Autism • Deafness • Developmental Delay • Hearing Impairment • Intellectual Disability • Other Health Impairment • Specific Learning Disability • Speech-Language Impairment • Visual Impairment 	<p>whether a child has a disability.</p> <p>Revised subsections J through W:</p> <p>Substantially redrafted eligibility criteria for each of the previously drafted categories, and inserted new criteria for each of the following:</p> <ul style="list-style-type: none"> • Deaf-Blindness • Emotional Disability • Multiple Disabilities • Orthopedic Impairment • Traumatic Brain Injury 	
<p>8 VAC 20-81-90</p>	<p>* A. A local educational agency shall evaluate a child with a disability in accordance with 8 VAC 20-81-70 before determining that the child is no longer a child with a disability under this chapter. Evaluation is not required before the termination of eligibility due to graduation with a standard or advanced studies high school diploma or reaching the age of 22.</p> <p>B. The IEP Team shall terminate the child's eligibility for special education and related services in the following areas:</p> <ol style="list-style-type: none"> 1. Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services. 2. A related service may 	<p>A. <u>Termination of a child's eligibility for special education and related services shall be determined by an eligibility group.</u></p> <ol style="list-style-type: none"> 1. <u>Termination of special education services occurs if the eligibility group determines that the child is no longer a child with a disability who needs special education and related service.</u> 2. A <u>The local educational agency shall evaluate a child with a disability...</u> 3. Evaluation is not required... <p>B. The IEP team shall terminate the child's eligibility for special education and related services in the following areas:</p> <ol style="list-style-type: none"> 1. Termination of special education services occurs if the team determines that the child is no longer a child with a disability who needs special education and related services. 2. A <u>a related service may be terminated during an IEP meeting without determining that the child is no longer a child with a disability who is eligible for special</u> 	<p>In response to significant public comment, all Virginia-specific parental consent provisions which were removed in the proposed regulations have been reinserted, including parental consent for the partial or complete termination of special education and related services.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>be terminated during an IEP meeting without determining that the child is no longer a child with a disability who is eligible for special education and related services. The IEP team making the determination shall include local educational agency personnel representing the specific related services discipline being terminated.</p> <p>3. Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements of 8 VAC 20-81-170 C., but parental consent is not required.</p> <p>C. If the parent(s) revokes consent for the child to continue to receive special education and related services, the local educational agency shall follow the procedures in 8 VAC 20-81-80 to terminate the child's eligibility....</p>	<p>education and related services.</p> <p><u>1. The IEP team making the shall make this determination shall include local educational agency personnel representing the specific related services discipline being terminated based on the current data in the child's education record, or by evaluating the child in accordance with 8VAC20-81-70.</u></p> <p><u>C. Written parental consent shall be required prior to any partial or complete termination of services.</u></p> <p><u>D. Prior to any partial or complete termination of special education and related services, the local educational agency shall comply with the prior written notice requirements of 8VAC20-81-170 C, but parental consent is not required.</u></p> <p><u>E. If the parent(s) revokes consent for the child to continue to receive special education and related services, the local educational agency shall follow the eligibility procedures in 8VAC20-81-80 to terminate the child's eligibility...</u></p>	
8 VAC 20-81-100	Subdivision A 1: "1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, who meet the age of eligibility requirements in 8 VAC 20-81-10 and who reside within the jurisdiction of each local educational agency."	Subdivision A 1: "1. A free appropriate public education shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, who meet the <u>definition of "age of eligibility" requirements as outlined in 8 VAC 20-81-10 and who reside within the jurisdiction of each local educational agency.</u> "	Revisions made in response to public comment and to clarify that the change is not related to the definition of "Developmental Delay." Rather, the change is intended to prevent restating information in the definition of "Age of Eligibility."
	N/A	Inserted into Subsection H a cross-reference to 8 VAC 20-81-130 A 2.	Revisions made in response to public comment.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>* Subdivision I 4: “4. ...The local educational agency responsible...shall ensure that the child receives appropriate physical education services in compliance with subdivision 3. of this subsection.”</p>	<p>Revised subdivision I 4: “4. ...The local educational agency responsible...shall ensure that the child receives appropriate physical education services in compliance with subdivision 3. of this subsection.”</p>	<p>Revision made to comply with the federal regulatory requirement.</p>
	<p>* Subsection L outlines requirements regarding “Length of School Day”.</p>	<p>At the end of Subsection L, inserted new sentence which states, “For preschool-aged children with disabilities, the IEP team determines the length of the school day.”</p>	<p>This long-standing VDOE interpretation was inserted for clarity.</p>
	<p>Subdivision M 1: VDOE “may use whatever state, local, federal, and private sources of support are available....”</p>	<p>Revised subdivision M 1: VDOE “may use whatever state, local, federal, and private sources of support <u>that</u> are available....”</p>	<p>Word inserted to mirror federal regulatory language.</p>
<p>8 VAC 20-81-110</p>	<p>* Subdivision B 2 d required that each LEA ensure that an IEP “d. Is implemented as soon as possible following parental consent to the IEP not to exceed 30 calendar days, unless the local educational agency documents the reasons for the delay.”</p>	<p>Revised subdivision B 2 d: “d. Is implemented as soon as possible following parental consent to the IEP, not to exceed 30 calendar days, unless the local educational agency documents the reasons for the delay.</p>	<p>The revision was made in response to public comment. The revised provision mirrors Virginia’s current regulatory requirement.</p>
	<p>* Subdivision B 7: “This chapter does not require that any local educational agency, teacher, or other person to be held accountable if a child does not achieve the growth projected in the annual goals, including benchmarks or objectives....”</p>	<p>Deleted the subdivision.</p>	<p>Revision made in response to public comment. However, VDOE will provide technical assistance on this issue to consumers, as the need arises.</p>
	<p>* Subdivision B 8 a: “If the local educational agency considers the parent’s request unreasonable and refuses to meet, the local educational agency shall</p>	<p>Deleted the subdivision.</p>	<p>Revision made in response to public comment. However, VDOE will provide technical assistance on this issue to consumers, as the need arises.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	advise the parent in writing of the reasons for denying the parent’s request and provide the parent information on this chapter’s dispute resolution options.”		
	* Subdivision C 4 regarding Part C transition participants: “In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent’s(s’) request, invite the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.”	Revised subdivision C 4: “In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent’s(s’) request, invite the Part C service coordinator or other representatives of the Part C system <u>to the initial IEP meeting</u> to assist with the smooth transition of services.”	Revisions made to clarify federal regulatory requirements.
	Subdivision E 2: a (3) “Shall inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.” b (1) “For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative(s) of the Part C system.”	Revised subdivision E 2: a (3) “Shall inform the parent(s) of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child <u>under subdivision C.1.f. of this section.</u> ” b (1) “For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other representative(s) of the Part C system <u>under subdivision C.4. of this section.</u> ”	Cross-references inserted for clarification.
	* Subdivision E 4 b: “4....the local educational agency shall have a record of the attempts to arrange a mutually agreed on time and place, such as: ... b. Copies of correspondence sent to the parent(s) and any responses received; or	Revised subdivision E 4 b: “4....the local educational agency shall have a record of the attempts to arrange a mutually agreed on time and place, such as: ... b. Copies of correspondence <u>(written, electronic, or facsimile)</u> sent to the parent(s) and any responses received; or	In response to public comment, language inserted for clarification.
	Subdivision E 6 outlined	Entire subdivision deleted from this	In response to public

Section number	Requirement at proposed stage	What has changed	Rationale for change
	provisions regarding audio and video recordings of IEP meetings.	section and reinserted at to 8 VAC 20-81-170 J.	comments, expanded the provision to apply to eligibility meetings and manifestation determination review meetings, as well as IEP meetings. As revised, the provisions were more properly placed in the Procedural Safeguards section.
	* Subdivision E 7: “7. The local educational agency shall give the parent(s) a copy of the child’s IEP at no cost to the parent(s) at the IEP meeting, but no later than 10 calendar days from the date of the IEP meeting.”	Subdivision E 7: “7. The local educational agency shall give the parent(s) a copy of the child’s IEP at no cost to the parent(s) at the IEP meeting, <u>or within a reasonable period of time after the IEP meeting, not to exceed but no later than 10</u> calendar days from the date of the IEP meeting.	Revisions made in response to public comments.
	* N/A	Inserted new subdivision in F 2: 2. The IEP team also shall: ... d. Consider the communication needs of the child; e. <u>Consider the child’s need for benchmarks or short-term objectives;</u> e-f. In the case of a child who is deaf or hard of hearing, consider the child’s language and communication needs, ...; and f-g. Consider whether the child requires assistive technology devices and services.	Revised these sections in response to public comments to emphasize that during the development of each child’s IEP, regardless of whether or not the child is participating in Virginia Alternate Assessment Program, the IEP team must consider whether or not the child requires benchmarks or short-term objectives in order to receive FAPE. The IEP team’s consideration must also be documented.
	* Subdivision G 3 regarding the content of an IEP: “3. For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives. a. The IEP team may determine that benchmarks or short-term objectives are	Subdivision G 3: “3. <u>If determined appropriate by the IEP team as outlined in F 2 of this section, a description of benchmarks or short-term objectives.</u> For children with disabilities who take alternate assessments aligned to alternate achievement standards, <u>the IEP shall include a description of benchmarks or short-term objectives.</u> a. The IEP team may determine that benchmarks or short-term	

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>required for other children with disabilities in order for the children to benefit educationally.</p>	<p>objectives are required for other children with disabilities in order for the children to benefit educationally. <u>a. The IEP team shall document its consideration of the inclusion in the child's IEP of benchmarks or short-term objectives.</u></p>	
	<p>* Subdivision G 4 regarding the content of an IEP: "4. A statement of the special education and related services and supplementary aids and services to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to the child:"</p>	<p>Revised subdivision G 4 regarding the content of an IEP: "4. A statement of the special education and related services and supplementary aids and services, <u>based on peer-reviewed research to the extent practicable</u>, to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to <u>enable</u> the child:"</p>	<p>Language was inadvertently omitted from the proposed regulations, and reinserted to comply with federal regulatory provisions.</p>
	<p>* Subdivision G 6 regarding the content of an IEP: "a. A statement of any individual accommodations or modifications that are necessary... b. If the IEP team determines that the child will not participate in a particular state assessment of student achievement (or part of an assessment), a statement of: (1) Why that assessment is not appropriate for the child; (2) How the child will be assessed, including participation in the alternate assessment for those students who meet the criteria for the alternate assessment; and</p>	<p>Revised subdivision G 6: "a. A statement of any individual <u>appropriate</u> accommodations or modifications that are necessary... b. If the IEP team determines that the child will not participate in <u>must take an alternate assessment instead of a particular state assessment of student achievement (or part of an assessment)</u>, a statement of: (1) Why that assessment is not appropriate for the child <u>the child cannot participate in the regular assessment;</u> (2) How the child will be assessed, including participation in the alternate assessment for those students who meet <u>Why the particular assessment selected is appropriate for the child, including that the child meets the criteria for the alternate assessment;</u> and (3) How the child's nonparticipation in the assessment will impact the child's</p>	<p>Word inserted into subdivision G 6 a to comply with federal regulatory requirements. Revisions to G 6 b through G 6 e were made to comply with federal regulatory requirements.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>(3) How the child’s nonparticipation in the assessment will impact the child’s....</p> <p>c. A statement that the child shall participate in either the state assessment for all children that is part of the state assessment program or the state’s alternate assessment;</p> <p>d. A statement of any individual accommodations or modifications...;</p> <p>e. If the IEP team determines that the child will not participate in a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:</p> <p>(1) Why that assessment is not appropriate for the child;</p> <p>(2) How the child will be assessed;</p> <p>(3) How the child’s nonparticipation in the assessment will impact the child’s courses; promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.</p>	<p>promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.</p> <p>c. A statement that the child shall participate in either the a a state assessment for all children that is part of the state assessment program or the state’s alternate assessment;</p> <p>d. A statement of any individual <u>appropriate</u> accommodations or modifications approved for use in the administration of divisionwide assessments of student achievement that are needed in order for the child to participate in the assessment;</p> <p>e. If the IEP team determines that the child will not participate in <u>must take an alternate assessment instead of</u> a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:</p> <p>(1) Why that assessment is not appropriate for the child <u>the child cannot participate in the regular assessment</u>;</p> <p>(2) How the child will be assessed <u>Why the particular alternate assessment selected is appropriate for the child</u>; and</p> <p>(3) How the child’s nonparticipation in the assessment will impact the child’s</p>	
	<p>* Subdivision G 7: 7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. Location refers to the continuum of alternative placements in 8 VAC 20-81-130 B.</p>	<p>Deleted the last sentence in subdivision G 7: “7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. Location refers to the continuum of alternative placements in 8 VAC 20-81-130 B.”</p>	<p>Sentence deleted to comply with applicable case law.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>* Subdivision G 8 b: “b. When periodic reports on the progress the child is making toward meeting the goals will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards.”</p>	<p>Revised subdivision G 8 b: “b. When periodic reports on the progress the child is making toward meeting the <u>annual goals</u> will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, <u>and at least as often as parents are informed of the progress of their children without disabilities.</u>”</p>	<p>As a result of significant public comment, language was inserted for clarity. The new language reflects the current Virginia regulatory requirement.</p>
	<p>* Subdivision G 10: “10. Secondary transition services. a. Prior to the child entering secondary school but beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually, the IEP shall include: (1) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; (2) The transition services, including courses of study (such as participation in advanced-placement course or career and technical education program), needed to assist the child in reaching those goals; and (3) A statement, if appropriate, of interagency responsibilities or any needed linkages. b. For a child pursuing a modified standard diploma, the IEP team</p>	<p>Revised subdivision G 10: “10. Secondary transition services. a. Prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually <u>thereafter</u>, the IEP shall include <u>age-appropriate</u>: (1) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; <u>and</u> (2) The transition services, including courses of study (such as participation in advanced-placement course or career and technical education program), needed to assist the child in reaching those goals. <u>Transition services shall be based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests.</u> b. <u>Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, in addition to the requirements in subdivision 10.a. of this subsection, the IEP shall also include</u> (3) <u>A</u> a statement, if appropriate, of interagency responsibilities or any linkages.</p>	<p>In response to public comment, secondary transition services will begin at age 14, rather than age 16. However, the language was revised to clarify the difference regarding the LEA’s responsibilities for providing transition services to a child with a disability at age 14 versus age 16.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>shall consider the child's need for occupational readiness upon school completion, including consideration of courses to prepare the child as a career and technical education program completer.</p> <p>c. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests."</p>	<p>bc. For a child pursuing a modified standard diploma, the IEP team shall consider the child's need for occupational readiness upon school completion, including consideration of courses to prepare the child as a career and technical education program completer.</p> <p>c. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests."</p>	
	<p>* Subdivision G 11: "11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student has been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority."</p>	<p>Revised subdivision G 11: "11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student and parent(s) has have been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority."</p>	<p>Revised in response to public comment.</p>
<p>8 VAC 20-81-120</p>	<p>* Subdivisions A 2 through A 4:</p> <p>"2. The new local educational agency shall provide a free appropriate public education to the child, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency, until the new local educational agency either:</p> <p>a. adopts the child's IEP from the previous local educational agency; or</p> <p>b. conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP that meets the requirements in this</p>	<p>Revised subdivisions A 2 through A 4:</p> <p>"2. The new local educational agency shall provide a free appropriate public education to the child, <u>including ensuring that the child has available special education and related services</u>, in consultation with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency, until the new local educational agency either:</p> <p>a. Adopts <u>and implements</u> the child's IEP from the previous local educational agency <u>with the parent's consent</u>; or</p> <p>b. Conducts an evaluation, if determined necessary by the local educational agency, and develops and implements a new IEP <u>with the parent's consent</u> that</p>	<p>In response to public comment, reinserted all Virginia-specific parental consent requirements, including those relative to children with disabilities who transfer.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>chapter.</p> <p>3. The local educational agency may develop and implement an interim IEP while obtaining and reviewing whatever information is needed to develop a new IEP.</p> <p>4. If the parent does not provide written consent to a new IEP or an interim IEP, the local educational agency shall provide FAPE, in consultation with the parent(s), including services comparable to those described in the child’s IEP from the previous local educational agency.</p> <p>a. The parent(s) or local educational agency may initiate the dispute resolution options of mediation or due process to resolve the dispute.”</p>	<p>meets the requirements in this chapter.</p> <p>3. The <u>new</u> local educational agency may develop and implement an interim IEP <u>with the parent’s consent</u> while obtaining and reviewing whatever information is needed to develop a new IEP.</p> <p>4. <u>If the parent(s) and the local educational agency are unable to agree on interim services or a new IEP, if the parent does not provide written consent to a new IEP or an interim IEP, the local educational agency shall provide FAPE, in consultation with the parent(s), including services comparable to those described in the child’s IEP from the previous local educational agency. The the parent(s) or local educational agency may initiate the dispute resolution options of mediation or due process to resolve the dispute. During the resolution of the dispute, the local educational agency shall provide FAPE in consultation with the parent(s), including services comparable to those described in the child’s IEP from the previous local educational agency.”</u></p>	
	<p>* Subsection C: “C. If the local educational agency determines it necessary to conduct an evaluation of the child, the local educational agency shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter. During the evaluation period, the local educational agency shall provide FAPE in consultation with the parent(s), including services comparable to</p>	<p>Revised subsection C: C. If the local educational agency determines it necessary to conduct an evaluation of the child, the local educational agency shall provide proper notice, initiate evaluation procedures, conduct the evaluation, determine eligibility, and develop an IEP in accordance with this chapter.</p> <p><u>1. During the evaluation period, child shall receive services in accordance with the existing IEP, excluding the sections of the IEP that are not in accordance with this chapter.</u></p> <p><u>2. the The local educational agency shall inform the parent(s)</u></p>	

Section number	Requirement at proposed stage	What has changed	Rationale for change
	those described in the child’s IEP from the previous local educational agency.”	<u>of the sections of the existing IEP that are not in accordance with this chapter.</u> provide FAPE in consultation with the parent(s), including services comparable to those described in the child’s IEP from the previous local educational agency.	
8 VAC 20-80-130	<p>Subdivision A 1 a: “a. That to the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children without disabilities....”</p> <p>Subdivision B 1: “1. Each local educational agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.”</p>	<p>Revised subdivision A 1 a: “a. That to the maximum extent appropriate, children with disabilities, <u>aged two to 21, inclusive,</u> including those in public or private institutions or other care facilities, are educated with children without disabilities....”</p> <p>Subdivision B 1: “1. Each local educational agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities, <u>aged two to 21, inclusive,</u> for special education and related services.”</p>	<p>Revisions were made in response to public comment to:</p> <ul style="list-style-type: none"> clarify that the provisions regarding LRE apply to preschool students; link the requirements regarding the provision of supplementary aids and services in nonacademic settings, which appears in the FAPE section, to similar requirements which appear in this section; and reinsert the continuum of alternative placements. This language had been moved to the definition of “special education,” but was reinserted for clarity.
	N/A	Inserted cross-reference to 8 VAC 20-81-100 H. in 8 VAC 20-81-130 A 2.	
	Subdivision B 2. “2. The continuum shall: a. Include the alternative placements listed in the term "special education" at 8VAC20-81-10....	Subdivision B 2. “2. The continuum shall: a. Include the alternative placements listed in the term "special education" at 8VAC20-81-10, <u>including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions....</u>	
8 VAC 20-80-150	Subdivision C 1: 1. Definitions applicable to this subsection.	Revised subdivision C 1: 1. Definitions applicable to this subsection <u>The following definitions are applicable for purposes of this subsection.</u>	Revisions were made to clarify that these definitions apply for purposes of these regulations only.
	* Subdivision C 2 b: “Each local school division	Revised subdivision C 2 b: “Each local school division shall	In response to guidance

Section number	Requirement at proposed stage	What has changed	Rationale for change
	shall consult with appropriate representatives of the private schools on how to carry out the child find activities....”	consult with appropriate representatives of the private schools <u>and representatives of parents of parentally-placed private schools children with disabilities</u> on how to carry out the child find activities....”	from US DOE, revisions were made to ensure compliance with federal regulatory requirements.
	* Subdivision C 4 c: “c. ...the local school division shall determine the number of parentally placed private school children with disabilities attending private schools located in the local school division, and ensure that the count is conducted by December 1 of each year....”	Revised subdivision C 4 c: “c. ...the local school division shall determine the number of parentally placed private school children with disabilities attending private schools located in the local school division, and ensure that the count is conducted by December 1 of each year <u>on a date between October 1 and December 1 of each year, as determined by the Superintendent of Public Instruction or designee....”</u>	
	* Subdivision C 5 a (5): (5) How and when those decisions will be made.	Revised subdivision C 5 a (5): (5) How and when those decisions will be made, <u>including how parents, teachers and private school officials will be informed of the process.</u>	
8 VAC 20-80-160	* Subsection A: “General. A child with a disability shall be entitled to the same due process rights that all children are entitled to under the Code of Virginia and the local educational agency’s disciplinary policies and procedures. School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to order a change in placement for a child with a disability that violates a code of student conduct.”	Divided proposed subsection A into subdivisions A 1 and A 3; and inserted new provisions A 2, A 3 a, and A 3 b: <u>“2. In the event that the child’s behavior impedes the child’s learning or that of others, the IEP team shall consider the use of positive behavioral interventions, strategies, and supports to address the behavior. The IEP team shall consider either:</u> <u>a. developing goals and services specific to the child’s behavioral needs, or</u> <u>b. conducting a functional behavioral assessment and determining the need for a behavioral intervention plan to address the child’s behavioral needs.”</u> 3. School personnel may consider	In response to public comments, inserted additional language regarding functional behavioral assessments (FBAs) and behavioral intervention plans (BIP) for clarity and to assist school administrators in making decisions regarding disciplinary incidents based on the child’s unique circumstances. Inserted additional language to assist parents and school administrators in understanding procedural protections for parents who disagree with an evaluation obtained by the LEA as part of the

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p>any unique circumstances....</p> <p>a. <u>In reviewing the disciplinary incident, school personnel may review the child’s IEP and any behavioral intervention plan, and/or consult with the child’s teacher(s) to provide further guidance in considering any unique circumstances related to the incident.</u></p> <p>b. <u>School personnel may convene an IEP team for this purpose.</u></p>	<p>FBA process.</p>
* N/A		<p>Inserted new subdivisions in D 6 a:</p> <p><u>“(1) A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the IEP team.</u></p> <p><u>(2) If the IEP team determines that the functional behavioral assessment will include obtaining new testing data or evaluation, then the parent is entitled to an independent educational evaluation in accordance with 8VAC20-81-170 B. if the parent disagrees with the evaluation or a component of the evaluation obtained by the local educational agency; or”</u></p>	
	<p>* Subdivision C 5 regarding “Special Circumstances”:</p> <p>“a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting..., if:</p> <p>(1) The child carries a weapon to or possesses a weapon at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or</p> <p>(2) The child knowingly</p>	<p>Revised subdivision C 5:</p> <p>“a. School personnel may remove a child with a disability to an appropriate interim alternative educational setting..., if:</p> <p>(1) The child carries a weapon to or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or</p> <p>(2) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at</p>	<p>Based upon guidance from US DOE, revised the language to comply with federal regulatory requirements.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or</p> <p>b. The child inflicts seriously bodily injury upon another person at school or a school function under the jurisdiction of a local educational agency or the Virginia Department of Education.</p> <p>c. For purposes of this part, ‘weapon,’ ‘controlled substance,’ and ‘serious bodily injury’ have the meaning given the terms under 8VAC20-81-10.”</p>	<p>a school function under the jurisdiction of a local educational agency or the Virginia Department of Education; or</p> <p>b(3). The child inflicts seriously bodily injury upon another person at school, <u>on school premises</u>, or <u>at</u> a school function under the jurisdiction of a local educational agency or the Virginia Department of Education.</p> <p>eb. For purposes of this part, ‘weapon,’ ‘controlled substance; and ‘serious bodily injury’ have the meaning given the terms under 8VAC20-81-10.”</p>	
	<p>* Subdivision F 1: “A local educational agency may request an expedited due process hearing...if the local educational agency believes that the child’s behavior is likely to result in injury to self or others.”</p>	<p>Revised subdivision F 1: “A local educational agency may request an expedited due process hearing...if the local educational agency believes that the child’s behavior is <u>substantially</u> likely to result in injury to self or others.”</p>	<p>The word was inadvertently omitted from the proposed regulations, and was inserted based on public comments, and to comply with federal regulatory requirements.</p>
<p>8 VAC 20-81-170</p>	<p>Subdivision B 3 a indicated that parent-initiate evaluations “Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding a free appropriate public education for the child; and”</p>	<p>Revised subdivision B 3 a: “Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding <u>the provision of a free appropriate public education for</u> <u>to</u> the child; and”</p>	<p>Language was revised for clarity.</p>
	<p>Subdivision D 1 e: “e. On the date on which the decision is made to make a disciplinary removal that constitutes a</p>	<p>Revised subdivision D 1 e: “e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement</p>	<p>Language inserted for clarity.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	change in placement.	<u>because of a violation of a code of student conduct.</u>	
	* Subsection E regarding parental consent.	Reinserted Virginia-specific requirements that parental consent must be obtained before any partial or complete termination of special education and related services, and prior to the provision of a free appropriate public education to children with disabilities who transfer.	In response to significant public comment, all Virginia-specific parental consent provisions which were removed in the proposed regulations have been reinserted.
	* Subdivision E 2 d indicated parental consent is not required before the “Administration of a test or other evaluation that is used to measure progress on the child’s IEP goals;”	Revised subdivision E 2 d: Administration of a test or other evaluation that is used to measure progress on the child’s IEP goals <u>and is included in the child’s IEP;”</u>	Inserted language was inadvertently omitted from the proposed regulations and was reinserted for clarity.
	* Subdivision E 8 b: “8. To meet the reasonable measures requirement of this section, ... b. Copies of correspondence sent to the parent(s) and any responses received; and”	Revised subdivision E 8 b: “8. To meet the reasonable measures requirement of this section, ... b. Copies of correspondence <u>(written, electronic, or facsimile)</u> sent to the parent(s) and any responses received; and	In response to public comment, language inserted for clarity.
	* Subdivision G 1 c: “A local educational agency may presume that a parent has authority to inspect and review records relating to the parent’s children unless the local educational agency has been advised that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.”	Subdivision G 1 c: “A local educational agency may presume that a parent has authority to inspect and review records relating to the parent’s children unless the local educational agency has been advised <u>provided a copy of a judicial order or decree, or other legally-binding documentation</u> , that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.”	The proposed language mirrored the federal regulatory requirement. However, based on public comment, revised language to provide clarity and to ensure that non-custodial parents receive appropriate procedural protections.
	* N/A	Inserted new subdivision G 5 c: <u>“c. A local educational agency may not charge a fee for copying a child’s IEP that is required to be provided to the parent(s) in</u>	Language inserted to comply with federal regulatory requirements.

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<u>accordance with 8VAC20-81-110 E.7."</u>	
	* N/A	Inserted new language in subdivision G 9 regarding hearing procedures: <u>"a. The local educational agency may:</u> <u>(1) develop local procedures for such a hearing process; or</u> <u>(2) obtain a hearing officer from the Supreme Court of Virginia's special education hearing officer list in accordance with the provisions of 8VAC20-81-210 G."</u>	Language inserted for clarity.
	* N/A	Inserted new subdivision G 11 b: <u>"b. Each local educational agency shall ensure that electronic communications via e-mails or facsimiles regarding any matter associated with the child, including matters related to IEP meetings, disciplinary actions, or service delivery, be part of the child's educational record."</u>	Language inserted in response to public comments.
	* N/A	Deleted language from proposed 8 VAC 20-81-110 E 6, and reinserted into new subsection J. in this section. In addition, modified language, as outlined below: "J. Audio and video recording. 1. The local educational agency shall permit the use of audio recording devices at IEP meetings <u>convened to determine a child's eligibility under 8VAC20-81-80, to develop, review, or revise the child's IEP under 8VAC20-81-110 F., and to review discipline matters under 8VAC20-81-160 E.</u> The parent(s) shall inform the local educational agency before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. ...	In response to public comments, revised these provisions to apply to eligibility meetings and manifestation determination review meetings, as well as IEP meetings. Given the expanded scope of the provisions, they were moved from the section regarding IEPs to the section on Procedural Safeguards.

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p>2. The local educational agency may have policies that prohibit, limit or otherwise regulate the use of:</p> <p>a. video recording devices at IEP meetings <u>convened pursuant to this chapter</u>; or</p> <p>b. Audio or video recording devices at meetings other than <u>those meetings that are identified in subdivision 1 of this subsection for the purposes of developing, reviewing, revising the child's IEP or reviewing matters related to discipline provisions under 8VAC20-81-160.</u></p> <p>3. These policies shall: ...</p>	
8 VAC 20-80-180	<p>* Subdivision B 2: 2. The local educational agency shall include a statement on the IEP...that the student has been informed of the rights that will transfer to the student on reaching the age of 18.</p>	<p>Revised subdivision B 2: 2. The local educational agency shall include a statement on the IEP...that the student and <u>parent(s) has</u> have been informed of the rights that will transfer to the student on reaching the age of 18.</p>	Revisions were made in response to public comments.
8 VAC 20-81-190	<p>* Subsection A: Requires that each LEA inform parents “of the option of mediation to resolve disputes involving the identification, evaluation of the child, or educational placement and services of the child or the provision of a free appropriate public education to the child, including matters arising prior to the filing of a state complaint or request for a due process hearing.”</p>	<p>Revised subsection A: Requires that each LEA inform parents “of the option of mediation to resolve disputes involving <u>any matter arising under Part B of the Act, including the identification, evaluation of the child, or educational placement and services of the child, or the provision of a free appropriate public education to the child, including and</u> matters arising prior to the filing of a state complaint or request for a due process hearing.”</p>	Based on guidance from US DOE, language was inserted to clarify the exact language of the federal statute and regulations.
	<p>Subdivision F 1: “An individual who serves as a mediator: 1. May not be an employee of any local educational agency or the</p>	<p>Revised subdivision F 1: “An individual who serves as a mediator: 1. May not be an employee of any local educational agency or the Virginia Department of Education if</p>	Language was changed for clarity.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	Virginia Department of Education if the Virginia Department of Education is providing direct services to a child...;"	the Virginia Department of Education it is providing direct services to a child...;"	
8 VAC 20-81-200	Subdivision D 1 b: "The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completing the investigation within the 60 day regulatory timeline."	Revised subdivision D 1 b: "The Virginia Department of Education shall establish a timeline in the notification letter for submission of any additional information so as not to delay completing completion of the investigation within the 60 day regulatory timeline <u>60 calendar days</u> ."	Language was changed for clarity.
8 VAC 20-81-210	Subsection A: "The Virginia Department of Education administers a special education due process hearing system to resolve disputes between parents and local educational agencies regarding the:"	Revised subsection A: "The Virginia Department of Education administers a <u>provides for an impartial</u> special education due process hearing system to resolve disputes between parents and local educational agencies regarding the:"	Language was changed for clarity.
	* Throughout the section, the proposed regulations indicated that responsibility for the implementation of the due process hearing system would be shifted exclusively to VDOE, rather than the responsibility being shared, in part, with the Supreme Court of Virginia.	Throughout the section language was changed to note that the Supreme Court of Virginia continues to maintain certain responsibilities, rather than shifting those responsibilities to the Virginia Department of Education.	Based on significant public comment and to avoid even the appearance of impropriety, the Supreme Court of Virginia will continue to be responsible for the administration of the due process system, including recruitment, selection, and appointment of special education hearing officers, and applicable training. Therefore, all provisions regarding VDOE's administration of the due process system were deleted.
	* N/A	Insert new subsection B: "B. The Virginia Department of Education uses the impartial hearing officer system that is administered by the Supreme Court of Virginia."	
	* Subdivisions B 1 through B 3 indicated that VDOE would establish procedures for the following: Recruitment,	Deleted subdivisions B 1 through B 3. Inserted new subsection C: " <u>The Virginia Department of Education uses the list of hearing officers maintained by the Office of</u>	Based on guidance from the Office of the Attorney General, language regarding VDOE's

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>selection, and appointment of Special Education Hearing Officers; providing Special Education Hearing Officers specialized training regarding applicable laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing; and evaluation, continued eligibility, and disqualification requirements of Special Education Hearing Officers.</p>	<p><u>the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration for the names of individuals to serve as special education hearing officers. In accordance with the Rules of Administration, the Virginia Department of Education provides the Office of the Executive Secretary annually the names of those special education hearing officers who are recertified to serve in this capacity.</u></p> <p>Inserted new subdivisions D 1 through D 3., which indicate that VDOE will establish procedures for the following: Providing Special Education Hearing Officers specialized training regarding applicable laws and regulations impacting children with disabilities, knowledge of disabilities and special education programs, case law, management of hearings, and decision writing; establishing the number of Special Education Hearing Officers who shall be certified to hear special education due process cases; and the process for evaluation, continued eligibility and disqualification requirements of Special Education Hearing Officers. Subdivision C 3 also outlines factors relative to a Special Education Hearing Officer’s recertification process.</p> <p>Proposed subdivision B 4 has been retained as C 4.</p>	<p>certification process for Special Education Hearing Officers was inserted.</p>
	<p>* Subdivision D 1: “A request for a hearing shall be made in writing to the local educational agency and the Virginia Department of Education.”</p>	<p>Subdivision F 1: “A request for a hearing shall be made in writing to the local educational agency and <u>to the Virginia Department of Education. A copy of that request shall be delivered contemporaneously by the requesting party to the other party.</u>”</p>	<p>Based on public comments, revisions were made to require that regardless of which party files a due process request, the request must be made in writing, and provided contemporaneously to both VDOE and the other party.</p>
	<p>* Subdivision D 6: “6. The party requesting</p>	<p>Subdivision F 6: “6. The party requesting the due</p>	<p>Although the proposed provision mirrored federal</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed as described in subdivision 2. of this subsection.</p> <p>a. If the local educational agency is not the initiating party to the due process hearing proceeding, the Special Education Hearing Officer has the discretionary authority to permit the local educational agency to raise issues at the hearing that were not raised in the parent's(s') request for due process in light of particular facts and circumstances of the case.</p>	<p>process hearing shall not be allowed <u>The special education hearing officer has the discretionary authority to permit either party to raise issues at the due process hearing that were not raised in the notice filed as described in subdivision 2. of this subsection by the party requesting the due process hearing in light of particular facts and circumstances of the case.</u></p> <p>a. If the local educational agency is not the initiating party to the due process hearing proceeding, the Special Education Hearing Officer has the discretionary authority to permit the local educational agency to raise issues at the hearing that were not raised in the parent's(s') request for due process in light of particular facts and circumstances of the case.</p>	<p>regulatory requirements, based on significant public comment and to ensure fairness, revisions were made to grant special education hearing officers the authority to permit either party, not just the local educational agency, to raise issues at the hearing that were not raised in the due process notice.</p>
	<p>Subdivision I 3:</p> <p>b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s).</p>	<p>Subdivision K 3:</p> <p>“b. The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parent(s), <u>even though the applicable appeal period has expired.</u>”</p>	<p>Language inserted for clarification.</p>
<p>* N/A</p>		<p>Inserted new provision L 6: <u>“6. Review and approve implementation plans filed by local educational agencies pursuant to hearing officer decisions in hearings that have been fully adjudicated.”</u></p> <p>Inserted new provision N 16: <u>“Develop and submit to the Virginia Department of Education an implementation plan, with copy to the parent(s) within 45 calendar days of the hearing officer's decision in hearings that have been fully adjudicated.</u></p> <p><u>a. If the decision is appealed or the school division is considering</u></p>	<p>Based on public comment, the role of implementation plans were reinserted to ensure that LEAs comply with hearing officers' decisions. However, to address concerns regarding duplicative processes, an implementation plan is now only required for fully adjudicated decisions, rather than for any decision of the hearing officer involving the dismissal of a case or the withdrawal of the due process request.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
		<p><u>an appeal and the decision is not an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, then the decision and submission of implementation plan is held in abeyance pursuant to the appeal proceedings.</u></p> <p><u>b. In cases where the decision is an agreement by the hearing officer with the parent(s) that a change in placement is appropriate, the hearing officer's decision must be implemented while the case is appealed and an implementation plan must be submitted by the local educational agency.</u></p> <p><u>c. The implementation plan:</u></p> <p><u>(1) must be based upon the decision of the hearing officer.</u></p> <p><u>(2) shall include the revised IEP If the decision affects the child's educational program.</u></p> <p><u>(3) shall contain the name and position of a case manager in the local educational agency charged with implementing the decision.</u></p>	
	<p>* Subdivision L 9: The LEA shall "Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of the hearing;"</p>	<p>Subdivision N 9: The LEA shall "Upon request, provide information to the special education hearing officer to assist in the special education hearing officer's administration of the <u>a fair and impartial</u> hearing;"</p>	<p>The language was inadvertently omitted from the proposed language.</p>
	<p>* N/A</p>	<p>Inserted new provision O 5 b: At the prehearing stage "<u>b. Determine when an IDEA due process notice also indicates a Section 504 dispute, whether to hear both disputes in order to promote efficiency in the hearing process and avoid confusion about the status of the Section 504 dispute</u>".</p>	<p>Inserted language based on public comment to ensure uninterrupted and consistent proceedings.</p>
	<p>* Subdivision M 14:</p>	<p>Subdivision O 14:</p>	<p>Revisions were made in</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>“Report findings of fact and decisions in writing to the parties but if a party is represented by an attorney, then to their attorney and the Virginia Department of Education.”</p>	<p>“Report findings of fact and decisions in writing to the parties but if a party is represented by an attorney, then to their attorney and their attorneys and the Virginia Department of Education.”</p>	<p>response to public comments.</p>
	<p>* Subdivision N 3 b: “The special education hearing officer may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.”</p>	<p>Subdivision P 3 b: “The special education hearing officer <u>or a party</u> may request an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.”</p>	<p>Language inserted for clarity.</p>
	<p>* N/A</p>	<p>Inserted new Q 1 e: “<u>The parties may enter into a confidentiality agreement as part of their resolution agreement. There is nothing in this chapter, however, that requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a parents’ participation in the resolution meeting.</u>”</p>	<p>Language inserted for clarity.</p>
	<p>* Subdivision O 2 d: “If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented as required to gain parental consent),”</p>	<p>Subdivision Q 2 d: “If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented as required to gain parental consent in accordance with the provision in 8VAC20-81-110 E 4),....”</p>	<p>In response to public comments and guidance from US DOE, revisions were made to clarify the LEA’s responsibility to document efforts to obtain parental participation in a resolution session.</p>
	<p>* N/A</p>	<p>Inserted new R 2 c: “The resolution period is part of, and not separate from, the expedited due process hearing timeline.”</p>	<p>Language inserted for clarity.</p>
	<p>* Subdivision Q 1: “1. The costs of an independent educational evaluation, Special Education Hearing Officer, court reporters, and transcripts which are incidental to the hearing are shared equally by the</p>	<p>Subdivision S 1: “1. The costs of an independent educational evaluation <u>ordered by the special education hearing officer</u>, Special Education Hearing Officer, court reporters, and transcripts that are incidental to the hearing are shared equally by the local educational agency and the</p>	<p>Based on guidance from US DOE, revised language to clarify if the parent disagrees with the evaluation completed by the LEA, the parent is entitled to an IEE at public expense.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	local educational agency and the Virginia Department of Education. Costs for any of these services incurred by a party for the specific benefit of that party's case are the responsibility of that party."	Virginia Department of Education. Costs for any of these services incurred by a party for the specific benefit of that party's case are the responsibility of that party."	
8 VAC 20-81-220	* Subdivision B 1 a: "The biological parent(s) are allowing relatives...to act as a parent;"	Revised subdivision B 1 a: "The biological parent(s) are allowing relatives...to act as a parent;"	The provision applies to all individuals meeting the definition of "parent," not just "biological parent."
	* Subdivision B 2: "The local educational agency shall appoint a surrogate parent for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when: a. No parent,...can be identified; b. The local educational agency...cannot discover the whereabouts of a parent; c. The child is a ward of the state; or d. The child is an unaccompanied homeless youth as defined in §725(6) of the McKinney-Vento Homeless Assistance Act (42 USC §1143a(6)) and §22.1-3 of the Code of Virginia."	Subdivision B 2: " <u>Unless one of the exceptions outlined in subdivision B.1. of this section applies, The</u> the local educational agency shall appoint a surrogate parent for a child, aged two to 21, inclusive, who is suspected of having or determined to have a disability when: a. No parent, as defined in 8VAC20-81-10, can be identified; b. The local educational agency, after reasonable efforts, cannot discover the whereabouts of a parent; c. The child is a ward of the state <u>and either subdivision 1.a. or 1.b. of this subsection is also met;</u> or d. The child is an unaccompanied homeless youth as defined in §725(6) of the McKinney-Vento Homeless Assistance Act (42 USC §1143a(6)) and §22.1-3 of the Code of Virginia <u>and either subdivision 1.a. or 1.b. of this subsection is met.</u>	In response to public comment, revised language to indicate that if a child with a disability is either an unaccompanied homeless youth or a ward of the state, a surrogate parent only needs to be appointed if no one meeting the definition of "parent" can be identified or the LEA cannot discover the whereabouts of a parent.
	Subdivisions B 5 through B 7.	Reorganized provisions in a new subsection as C 1 through C 3.	Revisions made for clarity.
	* Suidivision B 5: "The local educational agency shall establish procedures for determining whether a child needs a surrogate parent."	Subdivision C 1: "The local educational agency shall establish procedures <u>in accordance with the requirements of this chapter,</u> for determining whether a child needs a surrogate parent."	In response to public comment inserted clarifying language.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	<p>* Subdivision B 7 b outlined that a surrogate parent’s appointment may be terminated if: “The child is found no longer eligible for special education services;”</p>	<p>Subdivision C 3 b outlines that a surrogate parent’s appointment may be terminated if: “The child is found no longer eligible for special education services <u>and the surrogate parent has consented to the termination of services;</u>”</p>	<p>In response to public comment, all Virginia-specific parental consent provisions which were removed in the proposed regulations have been reinserted.</p>
	<p>* Subdivision C 2 c indicated that during the appointment of a surrogate parent, there should be “Consideration of the appointment of a qualified person of the same racial, cultural, or linguistic background as the child;”</p>	<p>Subdivision D 2: Deleted the language previously included in C 2 c.</p>	<p>Based on guidance from US DOE, the language was deleted.</p>
<p>8 VAC 20-81-230</p>	<p>* Subdivision B 1 d: “A copy of the local school division's interagency agreement regarding the provision of special education and related services in a regional or local jail....”</p> <p>* Subdivision G 2: “A copy of this agreement shall be submitted with the annual plan specified in subsection B of this section.”</p>	<p>Revised subdivision B 1 d: “A copy of <u>Any revisions to the</u> local school division's interagency agreement regarding the provision of special education and related services in a regional or local jail....”</p> <p>Subdivision G 2: “A copy of <u>any revisions to</u> this agreement shall be submitted with the annual plan specified in subsection B of this section.”</p>	<p>Revisions made to limit unnecessary paperwork and to comply with current practice regarding the submission of a LEA’s Annual Plan.</p>
	<p>* Subdivision D 1 regarding membership in local advisory committees: “a. A majority of the committee shall be parents of children with disabilities or individuals with disabilities. b. The committee shall include representation of gender and the ethnic population of the local school division.”</p>	<p>Revised subdivision D 1: “a. A majority of the committee shall be parents of children with disabilities or individuals with disabilities. b. <u>The committee shall include one teacher. The committee shall include representation of gender and the ethnic population of the local school division.</u> c. <u>Additional local school division personnel shall serve only as consultants to the committee.</u>”</p>	<p>Revisions were made in response to significant public comment. The requirement for school divisions to have a LAC was retained. However, revisions were made to ensure LACs could continue to be effective, while limiting the role of LEA personnel to remove the appearance of impropriety.</p>
	<p>* Subdivision F 2: “The local school division shall participate in transition planning conferences...in</p>	<p>Revised subdivision F2: “The local school division shall participate in transition planning conferences...in accordance with 34 CFR § 303.148(b) <u>§1437(a)(9)</u>”</p>	<p>Revisions were made based upon guidance from US DOE.</p>

Section number	Requirement at proposed stage	What has changed	Rationale for change
	accordance with 34 CFR § 303.148(b).”	<u>of the Act, and its federal implementing regulations.”</u>	
8 VAC 20-81-250	<p>* Subsection C:</p> <p>1. Subject to availability, reimbursement may be made available...pursuant to policies and procedures established by the Virginia Board of Education.</p> <p>2. Such reimbursement shall be in lieu of the state per pupil basic aid otherwise available for each child.</p>	<p>Revised Subsection C:</p> <p>1. Subject to availability, reimbursement may be made available...pursuant to policies and procedures established by the Virginia Board of Education <u>Superintendent of Public Instruction or designee.</u></p> <p>2. Such reimbursement shall be in lieu of the state per pupil basic aid <u>otherwise other state education funding</u> available for each child.</p>	Revisions were made to comply with the Virginia Appropriations Act and the Standards of Quality funding formulae.
8 VAC 20-81-300	Subdivision A 2 a: “(1) May not require the parent(s) to sign up for or enroll in public insurance programs in order for their child to receive a free appropriate public education;”	Revised subdivision A 2 a: “(1) May not require the parent(s) to sign up for or enroll in public <u>benefits or insurance</u> programs in order for their child to receive a free appropriate public education;”	Revisions made to comply with federal regulatory requirements.
8 VAC 20-81-320	Subdivision C 1: “...having the knowledge and skills to service children with disabilities....”	Revised subdivision C 1: “...having the knowledge and skills to service <u>serve</u> children with disabilities....”	Typographical error.
	* Subdivision C 1 b: “b. Additional education personnel to provide required related services as delineated in the child's IEP.”	Inserted new language in subdivision C 1 b: “b. Additional education personnel to provide required related services as delineated in the child's IEP. <u>Related services providers must be qualified consistent with the requirements of subdivision 19(a) of 8VAC20-81-20.</u> ”	Language inserted to comply with federal regulatory requirements.
8 VAC 20-81-340	Referenced caseloads for “Severe Disabilities”.	Deleted references to “Severe Disabilities”.	References to “Severe Disabilities” were deleted from other sections of the regulations, but inadvertently were retained in this section.
	References to “Developmental Delay: age 5-8”	Revised: “Developmental Delay: age 5- 8 6”	The revision was made in response to public comments.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	Outlined case load standards in Figure 1.	<p>Revised caseload standards for Level II children with a paraprofessional 100% of the time, who have an Emotional Disability, Hearing Impairment, Learning Disability, Intellectual Disability, Orthopedic Impairment, or Other Health Impairment.</p> <p>Clarified that there are not caseload standards for Level II children with Speech or Language Impairment.</p>	The caseload standards were revised to correct typographical errors. As corrected, the caseload standards mirror current requirements.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

See attached document.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Note: The current regulations are proposed for repeal (8 VAC 20-80-10, et seq.) and new regulations (8 VAC 20-81-10, et seq.) are being promulgated.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
8 VAC 20-80 et seq.	8 VAC 20-81 et seq.	Repealed	The following revisions were made throughout the chapter: Since the Board of Education closed the Virginia School for the Deaf, Blind, and Multi-Disabled at Hampton (VSDB-H), references to it were deleted. In response to public comment, the term “mental retardation” was replaced with “intellectual disability,” and the term “emotional disturbance” was replaced with “emotional disability.” To ensure consistency, the term “LEA” was replaced with “local educational agency. In addition, for clarity and accuracy, citation, typographical, and grammatical errors were corrected. Finally, in some sections, such as regarding Surrogate Parents, sections were reorganized for clarity.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Foreword and Preamble	Foreword and Preamble	Repealed	Although not regulatory, it is noted that the Foreword was substantially rewritten to reflect updated information, and the Preamble was modified in response to public comment, and to note the impact of the No Child Left Behind Act of 2001.
10 Repealed	10 Definitions	Repealed	<p>Definitions for the following terms have been added to comply with federal requirements, or to provide clarity: Act; Alternative assessment; Career and technical education; Collaboration; Core academic subjects; Co-teaching; Dangerous weapon; Destruction of information; Educational placement; Educational service agencies; Eligible student; Equipment; Excess costs; Federal core academic subjects; Highly qualified special education teacher; Homeless children; Individualized education program team; Intellectual disability; Limited English proficient; Long-term placement; National Instructional Materials Access Center (NIMAC); National Instructional Materials Accessibility Standard (NIMAS); Personally identifiable; Scientifically-based research; Serious bodily injury; Services plan; Special Education Hearing Officer; Timely manner; Universal design; and Ward of the state.</p> <p>Definitions for the following terms were modified to comply with federal requirements, in response to public comments, or to provide clarity: Age of eligibility; Alternate assessment; Assistive technology device; Autism; Change in placement; Change in placement for purposes of discipline; Child with a disability; Comprehensive Services Act; Consent; Developmental delay; Education record; Free appropriate public education; Functional Behavioral Assessment; Hearing impairment; Home tutoring; Impartial hearing officer; Implementation plan; Individualized education program; Initial placement; Interpreting services; Local educational agency (LEA); Orientation and mobility services; Orthopedic impairment; Other health impairment; Parent; Participating agency; Private school children with disabilities; Psychological services; Related services; School health services and school nurse services; Social work services in schools; Special education; Specific learning disability; Speech or language impairment; State-operated programs; Transition Services; and Vocational education.</p> <p>Definitions for the following terms were moved to this section from another section of the regulations: Controlled substance; Illegal drug; and Weapon.</p> <p>The following terms were deleted: Child study committee; Interpreting personnel; Itinerant; Qualified personnel; and Severe disability.</p>
30	20	Repealed	To comply with federal requirements, provisions were

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Repealed	Functions of the Virginia Department of Education		<p>included or modified which outline the VDOE's responsibilities to do the following:</p> <ul style="list-style-type: none"> • Ensure that all children with disabilities have a right to a FAPE, including, but not limited to children receiving special education and related services, even though they have not failed or been retained in a course or grade, and are advancing from grade to grade; • Ensure children with disabilities are included in all state-wide and division-wide assessments; • Ensure children with disabilities have available to them the variety of educational programs and services available to non-disabled children; • Comply with public participation guidelines in the development of policies and procedures; • Supervise educational programs; • Assist LEAs and participating state agencies to ensure state and federal requirements regarding "least restrictive environment" (LRE) are implemented; • Review and evaluate compliance of licensed private nonsectarian special education schools; • Establish a state special education advisory committee (SSEAC) that meets the membership requirements outlined in the federal special education regulations; • Establish goals for the performance of children with disabilities that promote the purposes of IDEA 2004 and are the same as Virginia's objectives under the "No Child Left Behind Act" (NCLB), and address graduation and drop-out rates, including performance indicators to assess progress toward achieving these goals; • Establish and maintain qualifications to ensure that personnel, including paraprofessionals, are appropriately and adequately prepared and trained (including highly qualified provisions); • Respond to complaints filed by parents regarding staff qualifications; • Ensure compliance with the requirements of the McKinney-Vento Act as it impacts the provision of special education and related services to children with disabilities; • Report and certify annually to the United States Department of Education the number of children with disabilities receiving special education and related services on a date between October 1 and December 1 of each year, rather than before February 1 each year, as determined by the Superintendent of Public Instruction or Designee; • Ensure that a practical method is developed and implemented to determine if significant disproportionality based on race and ethnicity is occurring in LEAs, and if so, that VDOE takes the steps required by federal mandates; • Ensure LEAs are informed of responsibilities to effectively implement procedural safeguards for children with disabilities;

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<ul style="list-style-type: none"> • Ensure that if VDOE provides direct services to children with disabilities, it complies with state and federal requirements, as if it is a LEA; • Ensure a practical method is developed and implemented to examine data to determine if significant discrepancies occur in the rate of long-term suspensions and expulsions for children with disabilities, and if so, that VDOE follows federal requirements; • Adopt the NIMAS for providing instructional materials to blind persons or other persons with print disabilities; • Ensure that parents of children with disabilities are not required to obtain a prescription for a controlled substance on behalf of their child as a condition of the child attending school, or receiving an evaluation or special education and related services; and • Monitor, enforce, and provide technical assistance regarding the IDEA 2004, in accordance with the federal special education regulations. <p>In response to public comment, the provision outlining VDOE’s responsibility to administer a special education due process system was revised to clarify VDOE’s roles and responsibilities.</p> <p>In accordance with new federal requirements, the provision that VDOE develop and implement a comprehensive system of personnel development was deleted.</p> <p>The due date for the SSEAC’s annual report to the Board of Education was modified from July 1st of each year to October 1st.</p> <p>To minimize the provisions that exceed federal requirements, the requirement that procedures be established to disseminate information from research, demonstration programs, and projects regarding children with disabilities was deleted.</p>
40 Repealed	30 Responsibilities of local school divisions and state-operated programs	Repealed	<p>The provisions outlining which LEA is responsible for the provision of FAPE to a student were restructured to clarify existing areas of ambiguity. In addition, provisions were added to address emancipated minors, married minors, students with disabilities placed in sponsored residential homes; and residency disputes between LEAs, or between a parent and the LEA. A provision was also added indicating that children with disabilities are entitled to FAPE regardless of citizenship or immigration status. Finally, revisions were made to clarify that the LEA of residence remains responsible for the provision of FAPE in the least restrictive environment for students with disabilities who are placed long-term in a SOP for non-educational reasons.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
<p>45 Repealed</p>	<p>40 Special Education Staffing Requirements</p>	<p>Repealed</p>	<p>Provisions were added to require that special education teachers be “highly qualified,” in accordance with the federal special education regulations.</p> <p>For clarity:</p> <ul style="list-style-type: none"> • Cross-references to staffing requirements outlined in the Virginia Appropriations Act, the Standards of Quality, the Standards of Accreditation, and the Virginia Licensure Regulations for School Personnel were added, and subsection A.1. was modified to ensure better alignment with these state requirements; • A requirement was added that students with disabilities be instructed in general education settings and classroom, as appropriate, given their IEP; and • The provision regarding alternative special education staffing plans was modified to indicate that an alternative staffing plan may only be approved if the LEA is seeking to implement an innovative program with which normal staffing requirements are inconsistent. <p>To increase flexibility for local school divisions, programs for early childhood special education must provide a schedule comparable in length to school age students, if determined appropriate by the child’s IEP team, rather than a 5 ½ hour day.</p> <p>To provide clarity and as a result of recent case law, the provisions regarding the qualifications for educational interpreting services have been modified to provide some flexibility regarding the credentials that an educational interpreter must obtain, while ensuring that children with disabilities are provided with quality interpreting services. The provisions which previously permitted waiver of the qualifications have been removed to comply with federal regulatory requirements, but a phase-in process for the new criteria has been included. In addition, a provision was inserted to clarify that the qualifications of an individual providing sign language services to a child who is not deaf or hard of hearing will be determined by the LEA.</p>
<p>50 Repealed</p>	<p>50 Child find</p>	<p>Repealed</p>	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • “Wards of the State” must now be included in each LEA’s child find program; • Each LEA’s responsibilities for child find activities relative to parentally-placed private school students were expanded; • Screenings for instructional purposes are not considered an evaluation; and • VDOE prohibits State and LEA personnel from requiring parents of children with disabilities to obtain a prescription for a controlled substance on behalf of their child as a

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			<p>condition of the child attending school, or receiving an evaluation or special education and related services. However, LEA personnel may share classroom-based observations with the parents regarding a student's performance, or need to be evaluated.</p> <p>In accordance with the <i>Code of Virginia</i> and the Board of Education regulations, children must be screened for scoliosis.</p> <p>To minimize state regulations that exceed the federal requirements, the following requirements were modified:</p> <ul style="list-style-type: none"> • Specific provisions which outlined how a LEA was required to conduct its annual public awareness campaign were replaced by a single provision which requires that each LEA have procedures to document its public awareness campaign; • The timelines associated with screenings, and the requirement that specific measures or instruments be used during screenings, were removed and replaced by a single provision which requires each school division to have screening procedures, which include timelines, to document that children are screened in accordance with the requirements of the <i>Code of Virginia</i> and other state regulations; and • The Child Study Committee requirements were removed, and replaced by a framework for a school-based structure for referrals, including timelines, required team members, and procedures for the referral process. The new provisions provide LEAs with greater flexibility to use scientific, response to intervention methods, while maintaining procedural protections for children suspected of having a disability.
52 Repealed	60 Referral for initial evaluation	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • A referral for an initial evaluation may be made by the VDOE or any state agency; • Evaluation requirements, identifying the information to be obtained and the comprehensive nature of the assessments; • Exceptions to the 65 business day timeline for the completion of an evaluation; and • New parental consent provisions for initial evaluations, including the LEA's options and responsibilities if a parent fails to provide, or refuses consent for an evaluation; that consent for an initial evaluation is not consent for initial services; reasonable efforts must be made to obtain parental consent; and that under certain circumstances, parental consent is not required for the initial evaluation of a ward of the state.

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			<p>To increase flexibility for local school divisions and parents, the parent and the eligibility group may agree in writing to extend the 65 business day timeline to obtain additional data for any eligibility determination.</p> <p>To minimize state regulations that exceed the federal requirements, while providing LEAs with greater flexibility to use scientific, response to intervention methods, and while maintaining procedural protections for children suspected of having a disability, the multiple requirements and timelines regarding Child Study Committees were deleted and provisions reflecting the new school-based structure for referrals were inserted.</p>
<p>54 Repealed</p>	<p>70 Evaluation and Reevaluation</p>	<p>Repealed</p>	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • The team must review local or state assessments and classroom-based observations; • The team must determine what additional data is necessary to determine the child's educational needs, the present level of academic achievement and related developmental needs, and whether or not the child needs or continues to need special education and related services; • New requirements regarding the administration of an evaluation in the language and form most likely to yield accurate information; • A written copy of the evaluation report must be provided at no cost to the parent; • Assessments of a child with a disability, or who is suspected of having a disability, who transfers between LEAs in the same school year, must be coordinated by the LEAs to ensure prompt completion of the full evaluation; • A reevaluation must be completed if the LEA determines that the child's educational or related services needs warrant a reevaluation, and at least every three years, unless the parent and the LEA agree that an evaluation is unnecessary; • A LEA must not conduct a reevaluation more than once a year unless the LEA and parent agree otherwise; • The LEA's responsibilities regarding parental consent when administering an evaluation that is administered to all children, and when the parent of a child who is home-instructed, home-tutored, or parentally-placed in a private school refuses, or fails to respond to a request to provide consent to evaluate; • The term "test" was replaced with the term "assessment;" • Modifications were made to the requirements if additional data is not needed for an evaluation, including: <ul style="list-style-type: none"> ➤ A LEA must provide the parent with prior written notice (PWN) of the right for a parent to request an evaluation to

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			<p>determine the child’s educational needs; and</p> <ul style="list-style-type: none"> ➤ A LEA is not required to gather additional information unless the parent requests the evaluation for the purpose of determining if the child continues to have a disability or to determine the child’s educational needs. <p>For clarity:</p> <ul style="list-style-type: none"> • A provision was added, indicating that the parent may resolve a dispute regarding the LEA’s refusal to do an evaluation, via mediation or due process procedures; • Where appropriate, provisions that apply to both evaluations and reevaluations were consolidated; and • A provision was inserted, noting that a LEA is not required to evaluate a child with a disability who graduates with a standard or advanced diploma, but the parent must receive PWN of the change in placement. <p>To minimize state regulations that exceed the federal requirements, the following requirements were deleted or modified:</p> <ul style="list-style-type: none"> • Requirements outlining who must be evaluated and the procedures that a LEA must use to complete the evaluation, as outlined in the previous regulations, at 8 VAC 20-80-54 A. through C., were replaced with the requirement that LEAs establish procedures for evaluations and reevaluations in compliance with federal regulatory requirements; • The provision allowing the group to conduct its review without a meeting was deleted; and • The requirement that a triennial evaluation be initiated no less than 65 business days prior to the third anniversary of the last date of eligibility was removed. Rather, a reevaluation process must be initiated in sufficient time to complete the process prior to the third anniversary of the date eligibility was last determined. <p>To increase flexibility for local school divisions and parents, the parent and the eligibility group may agree in writing to extend the 65 business day timeline to obtain additional data for any eligibility determination.</p> <p>In response to public comment, inserted a provision requiring that a written copy of the evaluation report(s) be provided to the parent(s) prior to or at the meeting where eligibility group reviews the evaluation report(s) or immediately following the meeting, but no later than 10 days after the meeting.</p>
56 Repealed	80 Eligibility	Repealed	<p>The timeline requirements previously outlined at 8 VAC 20-80-56 A.1. through A.3. were deleted from this section.</p> <p>To comply with federal requirements, the following provisions</p>

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			<p>were added:</p> <ul style="list-style-type: none"> • In addition to determining whether or not a child is eligible for special education and related services, the eligibility group must determine the educational needs of the child; • A child may not be determined eligible for special education and related services if the determinant factor is the lack of appropriate instruction in math or reading, including the essential components of reading instruction; • The requirements for determining a child eligible as a child with a specific learning disability; and • Parental consent must be obtained before personally identifiable information is released for children who are parentally placed in a private school outside their LEA of residence. <p>The following provisions are required by the federal regulations relative to eligibility determinations for specific learning disabilities, but have been applied to all eligibility determinations:</p> <ul style="list-style-type: none"> • Required eligibility group considerations; • Requirements for documenting the eligibility group’s determination of eligibility; • New required members of the eligibility group; and • Requirements that as part of the eligibility process, the eligibility group ensure that a child is, or has been, observed in routine classroom instruction. <p>For clarity:</p> <ul style="list-style-type: none"> • A provision was added that a determination regarding eligibility must be made on an individual basis by the eligibility group; • The provisions regarding transfer students were deleted from this section, and inserted into new section 8 VAC 20-81-120; and • New eligibility criteria were added for all disability categories, and a requirement was inserted that LEAs use the new criteria as part of the determination of whether a child has a disability. <p>The ages of eligibility for “Developmental Delay” were changed from two through eight, inclusive, to two through six, inclusive. School divisions that have eliminated the upper age range for ages 7 and 8 report documented success in providing direct support to children who are at risk for academic or behavioral difficulty in the general education classroom. They have reduced the over identification of children, particularly for children of color and poverty, while at the same time placing more emphasis on timely interventions within their general education programs. Parents and school personnel still retain the right to request to initiate the evaluation-eligibility process of children suspected of having</p>

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			<p>a disability. Some children, served under the DD category from ages two to six, inclusive, will continue eligibility for special education and related services and be more properly served in one of the other disability categories, such as autism, other health impaired, or multiple disabilities.</p> <p>To provide LEAs with flexibility, if the eligibility group determines that there is not a change in eligibility and educational needs, the IEP team is not required to convene unless the parent requests it.</p>
<p>58 Repealed</p>	<p>90 Termination of special education and related services</p>	<p>Repealed</p>	<p>To comply with federal requirements, each LEA must complete a summary of academic achievement and functional performance when a child with a disability graduates with a standard or advanced diploma or reaches the age of 22.</p> <p>For clarity:</p> <ul style="list-style-type: none"> • A provision was added requiring the LEA to comply with PWN requirements prior to partial or complete termination of special education and related services; • Inserted a provision that although an evaluation must be completed prior to the complete termination of special education and related services, to terminate a related service, the IEP team may rely on current data in the child's education record, or complete an evaluation in accordance with 8 VAC 20-81-70. • Provisions outline the LEA's responsibilities for completing a summary of academic achievement and functional performance if a child with a disability exits school without graduating with a standard or advanced diploma or reaching the age of 22, and if the child returns to school after exiting.
<p>60 Repealed</p>	<p>100 Free appropriate public education</p>	<p>Repealed</p>	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • FAPE must be provided to children with disabilities who need special education and related services, even if they have not failed or been retained in a course or grade, and even if they have received a general educational development (GED) credential; • VDOE has a goal of providing full educational opportunity to required children with disabilities by 2015; • LEAs are not obligated to provide FAPE to children with disabilities who are eligible under IDEA Part B, but who choose to receive early intervention services under IDEA Part C; • Provisions outlining each LEA's responsibilities regarding hearing aids, surgically implanted devices, supplementary aids and services, and physical education; and

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			<ul style="list-style-type: none"> • Provisions outlining VDOE’s responsibilities regarding the methods and payments for ensuring children with disabilities are provided with FAPE. <p>To comply with federal regulatory requirements, the provisions outlining the LEA’s responsibility for ensuring that a child with a disability may participate in physical education was modified.</p> <p>To comply with guidance from the U.S. Department of Education, or to align the state regulations with recent case law, provisions were added that outline each LEA’s responsibilities regarding the provision of personal devices, the length of the commute of a child with a disability, extended school year services, and disability harassment.</p> <p>To minimize state regulations that exceed the federal requirements, LEAs are not required to establish a goal of providing a full educational opportunity to required children with disabilities.</p> <p>For clarity, inserted:</p> <ul style="list-style-type: none"> • Provisions that FAPE must be provided to children with disabilities who meet the age of eligibility requirements in 8 VAC 20-81-10, and to children with disabilities who reside within the school division but do not hold a valid U.S. citizenship or student visa; • A cross-reference to 8 VAC 20-81-130 A 2, which also references the LEA’s responsibility to ensure that supplementary aids and services are provided, as determined appropriate and necessary by the IEP team, to provide children with disabilities an equal opportunity to participate in non academic and extracurricular activities; and • A requirement that the IEP team determines the length of the school day for preschool-aged children with disabilities.
62 Repealed	110 Individualized education program	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • The LEA’s responsibilities to consolidate, to the extent possible, reevaluation and IEP team meetings; • The LEA’s option to permit a child’s IEP to be amended without convening an IEP meeting, if the parent and the LEA agree, including that the IEP team members must be informed of any modifications, the meeting does not substitute for the annual IEP review, and upon request of the parent, the LEA must provide a revised copy of the IEP with the amendments incorporated; • The IEP team must include not less than one regular education teacher of the child, and not less than one special education teacher of the child, rather than “at least

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			<p>one” of each;</p> <ul style="list-style-type: none"> • The provision previously outlined in 8 VAC 20-80-62 C. 2. c., was replaced with a provision outlining the LEA’s obligation to obtain parental consent, or the consent of a child who has reached the age of majority, and to invite a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services; • A LEA must, at the request of the parent, invite the Part C coordinator or other representative of the Part C system to attend the initial IEP meeting to assist with the smooth transition of services, and the notice of the initial IEP meeting must inform the parent(s) of this right; • If the LEA complies with certain requirements, a required member of the IEP team may be excused from attending the IEP meeting, in whole or in part; • The distinction between the secondary transition services provided to children with disabilities at age 14, and at age 16 have been deleted, including the distinction in the IEP meeting notice requirements; • During the development, review, and revision of a child’s IEP, the team must consider the academic, developmental, and functional needs of the child; however, the requirement that the results of the child’s performance on any general state or division wide assessment program be considered was deleted; • Nothing requires the inclusion of information into a child’s IEP beyond what is specifically required; • The content of a child’s IEP must include, in part, the following: A statement of the child’s present levels of academic achievement and functional performance; a statement of measurable annual goals, including academic and functional goals; for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives; a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child; a statement of any individual accommodations or modifications that are necessary to measure the child’s academic and functional performance on a state and division-wide assessment, and if the IEP team determines that the student must take an alternate assessment, a statement, which includes federally-required elements; a statement of how the child’s progress toward the annual goals will be measured and when the periodic reports on the progress the child is making will be provided; and required information regarding secondary transition, including appropriate measurable postsecondary goals based on age-appropriate transition assessments, and transition services, including courses of study, which are

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			<p>based on the child’s needs, and consider the child’s preferences and interests;</p> <ul style="list-style-type: none"> • Deleted former provision 8 VAC 20-80-62 B. 9., which noted that a LEA, teacher, or other person is not required to be held accountable if a child does not achieve the growth projected in the annual goals, including benchmarks or objectives; • Deleted previous provision 8 VAC 20-80-62 F. 7. b.; and • In the development of an IEP for a preschool-aged child with a disability, the IEP team must consider an IFSP that contains the IFSP content contained in Part C, and may incorporate those components in the child’s IEP. <p>For consistency, the 30-day timeline which applies to the development of an IEP following the initial eligibility determination, also applies to the development of an IEP following a reevaluation and eligibility process, if the IEP team determines that changes are necessary. The provision previously at 8 VAC 20-80-62 B. 5. was deleted given the insertion of the above provision.</p> <p>To ensure the provision of FAPE to a child with a disability:</p> <ul style="list-style-type: none"> • An IEP must be implemented as soon as possible following receipt of parental consent; and • Transition services must be initiated for a student with a disability prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14. Not later than the first IEP to be in effect when the child turns 16, the IEP must include, if appropriate, a statement of interagency responsibilities or any needed linkages. <p>In accordance with guidance from the U.S. Department of Education, the LEA determines the school personnel to fill the roles of the required IEP team members.</p> <p>For clarity, the following provisions were added:</p> <ul style="list-style-type: none"> • If an LEA uses alternative means of ensuring parent participation in meetings, and if that results in additional costs, the LEA is responsible for those costs; • The LEA shall have a record of attempts to arrange a mutually agreed on time and place such as copies of correspondence sent to the parent, including written, electronic, or facsimile; • The LEA must give the parent(s) a copy of the child’s IEP at the IEP meeting, or within a reasonable period of time after the IEP meeting, not to exceed 10 calendar days; • An IEP team may determine that benchmarks or short-term objectives are required for any child with a disability if necessary for the child to benefit educationally; • For a child pursuing a modified standard diploma, the IEP

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			<p>team must consider the child’s need for occupational readiness upon school completion; and</p> <ul style="list-style-type: none"> • The provisions which were previously at 8 VAC 20-80-62 H. were restructured without making substantive changes. <p>The following provisions were deleted:</p> <ul style="list-style-type: none"> • Former provision 8 VAC 20-80-62 C. 1. h., which exceeded the federal requirements. However, the child’s caseworker may still attend IEP meetings at the discretion of the LEA, or someone meeting the definition of a “parent;” • To comply with applicable case law, from 8 VAC 20-80-62 F. 6., the statement, “Location refers to the continuum of alternative placements in 8 VAC 20-80-64 B.,” and • Former provision 8 VAC 20-80-62 F. 5. f., regarding the Literacy Passport Test, as it is no longer applicable. <p>In response to public comment:</p> <ul style="list-style-type: none"> • Inserted provisions requiring that each child’s IEP team consider the child’s needs for benchmarks or short-term objectives, even if child is not participating in the Virginia Alternate Assessment Program. That consideration must be documented; • Inserted a requirement that progress reports must be provided at least as often as parents are informed of the progress of their children without disabilities; • Inserted a requirement that at least one year before a student reaches the age of majority, the student’s IEP must include a statement that both the student and the parent(s) have been informed regarding the transfer of rights; and • Expanded the provisions regarding allowing a parent to audiotape or videotape a meeting, distinguishing between the parent’s right to audiotape an Eligibility, IEP or Manifestation Determination Review meeting, and the LEA’s option to have policies, if certain criteria are met, that prohibit, limit, or otherwise regulate the use of video recording devices at meetings convened under the special education regulations, or audio or video recording devices at meetings other than Eligibility, IEP or Manifestation Determination Review meetings. Given the expanded language in these provisions, they were moved to the new 8 VAC 20-81-170.
N/A	120 Transfer students		<p>For clarity, these provisions, which were previously included as part of 8 VAC 20-80-56, have been moved to their own section. To comply with federal regulatory requirements, the new LEA must take reasonable steps to obtain the child’s records from the previous LEA in which the child was enrolled, and the previous LEA must take reasonable steps to respond to the request from the new LEA.</p> <p>For clarity, the following provisions have been included:</p>

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			<ul style="list-style-type: none"> • If an LEA is not forthcoming in the provision of a child’s educational records, VDOE may be contacted for assistance; • If the new LEA is unable to obtain the IEP from the previous LEA or the parent, the new LEA is not required to provide the student with special education and related services. Rather, the student may be placed in a general education setting, pending an evaluation, if an evaluation is necessary; • The LEA may develop and implement an interim IEP while obtaining and reviewing the information needed to develop a new IEP; • If there is a dispute between the new LEA and the parent regarding interim services or a new IEP, the LEA must provide FAPE to the child in consultation with the parents(s), including services comparable to those described in the child’s IEP from the previous LEA; • If the LEA determines that an evaluation is necessary, the LEA must comply with the requirements for notice, to initiate and conduct an evaluation, determine eligibility, and develop an IEP; and • To comply with the requirements of the Comprehensive Services Act (CSA), provisions were added which outline each LEA’s responsibilities if a child with a disability is placed in a private residential school under CSA, and then transfers. These provisions include a 30 day transition period during which the former CSA team is responsible for funding services, and the new LEA must review and revise, if necessary, and implement a new IEP.
<p>64 Repealed</p>	<p>130 Least restrictive environment and placements</p>	<p>Repealed</p>	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • Children with disabilities must participate with children without disabilities to the maximum extent appropriate, including in the provision of nonacademic and extracurricular services and activities; • LEAs must ensure that each child with a disability has the supplementary aids and services determined appropriate and necessary by the child’s IEP team to participate in nonacademic settings. A cross-reference to 8 VAC 20-81-100 H. was inserted; and • Language was amended to note that benchmarks and short-term objectives are no longer required for all children with disabilities. <p>Modified 8 VAC 20-80-64 B. 2. b. to require, versus recommend, that a continuum include “integrated service delivery.”</p> <p>For clarity:</p> <ul style="list-style-type: none"> • Added language to emphasize that the LRE provisions apply to children with disabilities, aged two to 21;

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65 Repealed	140 Placement of children at the Virginia schools	Repealed	To increase flexibility for school divisions and the Virginia School for the Deaf and Blind at Staunton (VSDB-S), deleted the requirement that school divisions and VSDB-S develop contractual agreements to ensure compliance with the federal and state special education requirements. However, retained the provisions that outline responsibility for the transportation of students with a disability to and from VSDB-S.
66 Repealed	150 Private School Placement	Repealed	<p>To comply with federal requirements, the previous reference to “residential placement” in 8 VAC 20-80-66 A. 1., was modified to reference “a private school or facility.”</p> <p>The federal language modified each LEA’s responsibilities regarding children with disabilities who are parentally-placed in private schools, and the state provisions were rewritten to ensure compliance. Most significantly, a LEA is no longer responsible for those children who are residents of the LEA, and who are parentally-placed in private schools. Rather, LEAs are responsible for those children who are parentally-placed in private schools, which are physically located within the LEA. Additional federal changes to each LEA’s responsibilities regarding parentally-placed private school children with disabilities include the following:</p> <ul style="list-style-type: none"> • An expansion of the LEA’s child find responsibilities, including ensuring that comparable activities to those for public school students are undertaken, that LEA staff meet with representatives of private schools to determine how to conduct a thorough and complete child find process, and that the child find process ensure the equitable participation of parentally-placed private school children, and an accurate count of that population of students; • If a LEA has not expended all of its proportionate share amount for equitable services by the end of the fiscal year for which Congress appropriates the funds, the LEA must carry the funds over for an additional year; • LEAs may supplement, but not supplant, the proportionate share amount of federal funds for the provision of equitable services; • In calculating the proportionate share amount, LEAs must engage in timely and meaningful consultation with private school representatives prior to completing child find responsibilities to determine the number of parentally-placed private school children attending private schools within the LEA; • The child count must be conducted on a date between October 1 and December 1 of each year, rather than before February 1 each year, as determined by the Superintendent of Public Instruction or Designee; • There has been an expansion of the requirements

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			<p>regarding the LEA’s responsibility to consult with private school representatives to include five different elements, including how, where, and by whom special education and related services will be provided for parentally-placed private school students, and the types of services to be provided. If the LEA disagrees with the private school representatives regarding the provision of services or the types of services, the LEA must provide them with a written explanation of the LEA’s reasoning;</p> <ul style="list-style-type: none"> • Following consultation, the LEA must obtain a written affirmation from the private school representatives; • Under certain circumstances, private school representatives may file a complaint to VDOE against the LEA, and if the complainant is dissatisfied with VDOE’s decision, the decision may be appealed to the U.S. Department of Education; • The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in public school, except that the requirements regarding highly qualified special education teachers do not apply; • Services may be provided by LEA employees, or through contract with the LEA; • Special education and related services provided to parentally placed private school children with disabilities, must be secular, neutral, and nonideological; • The dispute resolution options available to parentally placed private school children apply to the LEA where the private school is located; and • Each LEA must maintain for its records, and provide to VDOE, certain data regarding parentally-placed private school children. <p>For clarity, and to comply with federal requirements, the federal definition of the terms “elementary school” and “secondary school” were added. A new definition of the term “private school,” was also included, outlining applicable federal and state requirements.</p>
68 Repealed	160 Discipline procedures	Repealed	<p>The section was revised to comply with federal requirements, including the addition or modification of the following provisions:</p> <ul style="list-style-type: none"> • School personnel may consider any unique circumstances on a case-by-case basis when deciding whether or not to change the placement of a child with a disability who violates the code of conduct; • A short-term removal is up to 10 consecutive school days, or 10 cumulative days in a school year; • A child with a disability may be removed from their current educational placement to another setting for disciplinary

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			<p>reasons to the extent that the alternatives are applied to children without disabilities;</p> <ul style="list-style-type: none"> • The LEA’s responsibilities for providing services to a child with a disability during a short-term removal, including the LEA’s responsibilities to ensure that beginning on the 11th day of removal, the student is provided with services to enable the student to continue to participate (not necessarily progress) in the general education curriculum, progress toward meeting the student’s IEP goals, and be included in VDOE and division wide assessment programs; • The process by which a LEA determines if a series of removals constitute a pattern of removal was modified to indicate that if the child’s behavior was substantially similar to behavior in previous incidents, a pattern may exist; however, the determination is made by the LEA on a case-by-case basis; • Under special circumstances, a LEA may remove a child with a disability to an appropriate interim alternative education setting (IAES) for up to 45 school days (rather than calendar days) regardless of whether the behavior is a manifestation of the child’s disability. Special circumstances now include if the child inflicts serious bodily injury while at school or at a school function; • The LEA’s responsibilities for providing services to a child with a disability during a long-term removal, including the LEA’s responsibilities to ensure that the student is provided with services to enable the student to continue to participate (not necessarily progress) in the general education curriculum, progress toward meeting the student’s IEP goals, be included in VDOE and division wide assessment programs, and receives, as appropriate, a functional behavioral assessment (FBA), and a behavioral intervention plan (BIP) to address the behavior violation so that it does not recur; • Deleted the requirement that the LEA automatically conduct a FBA and the IEP team meet to develop a BIP, if it has not already done so, no later than 10 business days after first removing a student for more than 10 school days in a school year, or commencing a long-term removal. Rather, a BIP must be developed, at a minimum when a student’s behavior interferes with his learning or that of others, or if the IEP team determines that the child’s behavior is a manifestation of his disability and a FBA or BIP have not already been completed; • Deleted the provisions, which previously appeared in 8 VAC 20-80-68 C. 4. b., regarding determining that maintaining a child with a disability in the current placement is substantially likely to result in injury to the student or others, except that if an LEA believes that maintaining the student in the current educational placement is substantially likely to result in injury to the child or others, the LEA may

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			<p>request a due process hearing, and a Special Education Hearing Officer may order a change in placement to an IAES for not more than 45 school days;</p> <ul style="list-style-type: none"> • A manifestation determination decision must be made by the LEA, the parent(s), and the relevant members of the IEP team, rather than by “the IEP team and other qualified personnel;” therefore, the definition of “other qualified personnel” was also deleted; • The provisions, which previously appeared at 8 VAC 20-80-68 C. 5. (2), were replaced with the new federal requirements for determining whether or not a child’s behavior is a manifestation of his disability, including the LEA’s responsibilities if the child’s behavior is or is not a manifestation of his disability; • Deleted the previous provision at 8 VAC 20-80-68 C. 6. b.; • Added provisions regarding the applicable timelines for an expedited due process hearing, including 20 school days to complete a hearing from the date the request for the hearing is filed, 10 school days following the hearing to issue a determination, and 7 calendar days to convene a resolution session, unless waived; • A Special Education Hearing Officer may return the child with a disability to the placement from which the child was removed if the Special Education Hearing Officer determines that the removal was a violation of the federal requirements or the child’s behavior was not a manifestation of the child’s disability; • The provisions which previously outlined a child’s placement during an appeal, and which included a child’s right to “stay put” in the current educational placement during an appeal were deleted. Instead, a child with a disability must remain in the IAES pending the decision of the Special Education Hearing Officer or until the expiration of the time for the disciplinary placement; • Deleted the provision which previously permitted the “behavior or performance of the student” to trigger protections for a student not yet eligible for special education and related services; • A LEA must be deemed to have knowledge that a child is a child with a disability before the behavior that precipitated the disciplinary action occurred, a teacher of the child or school personnel expressed concern about a pattern of behavior demonstrated by the child directly to the director of special education of the LEA or to other supervisory personnel of the LEA; • A LEA is not deemed to have knowledge that a child is a child with a disability if the parent has not allowed a previous evaluation of the child, has refused services for the child, or the child has been evaluated and determined ineligible; • Previous provisions from 8 VAC 20-80-68 C. 9. were

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			<p>deleted; and</p> <ul style="list-style-type: none"> • The LEA is required to include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child, transmit the statement to the VDOE upon request to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students, and include the statement in the child's educational records, and with the child's IEP, when the child transfers from one school to another. Provisions which outline the content of the statement were also added. <p>For clarity, the definitions of the following terms were included in 8 VAC 20-81-10: Weapon, Controlled substance, Illegal drug, and Serious bodily injury.</p> <p>In response to public comment, inserted additional language regarding FBAs and BIPs, to clarify that when a child's behavior impedes his learning or that of others, the IEP must consider the use of positive behavioral interventions, strategies and supports to address the behavior. Also inserted provisions requiring the IEP team to consider developing goals and services to address the child's behavioral needs; or conducting a FBA and determining the need for a BIP. In addition, included language emphasizing that if a FBA is an evaluation, then the parents are entitled to receive an independent educational evaluation, if they disagree with the evaluation.</p>
70 Repealed	170 Procedural safeguards	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • In the case of a child with a disability who is transitioning from Part C to Part B services, the parent must be informed that an invitation to the initial IEP meeting must, at the parent's request, be sent to the Part C service coordinator or other representative to assist with a smooth transition; • To ensure parent involvement in placement decisions, parents must be provided with meeting notice meeting all requirements outlined in 8 VAC 20-81-110 E.; • The LEA must take whatever action is necessary to ensure that the parent understands and is able to participate in group discussions regarding the child's educational placement; • A child's placement in an IAES placement is an exception to the requirement that IEP teams determine a child's placement; • A parent is entitled to only one independent education evaluation (IEE) at public expense each time the LEA conducts an evaluation component with which the parent disagrees; • If a parent obtains an IEE at public expense or shares with the LEA an evaluation obtained at private expense, the

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			<p>evaluation results must be considered by the LEA, if it meets LEA criteria, in decisions regarding FAPE, and it may be presented by either party in a due process hearing;</p> <ul style="list-style-type: none"> • If a Special Education Hearing Officer requests an IEE as part of a due process hearing, it must be at public expense; • The provision stating that the LEA may provide PWN at the same time that it requests parental consent was deleted; • The events which trigger the requirement to provide a copy of the procedural safeguards document (PSD) were modified, and it was indicated that posting of a LEA's PSD on its Web site does not satisfy the requirement to provide the PSD, as required; • The required content of the PSD was modified; • The parental consent provisions were modified, including the following: <ul style="list-style-type: none"> ➤ Consent is required prior to accessing a child's public benefits or insurance; ➤ Consent is required before inviting to an IEP meeting the representative of an agency that may be providing or paying for secondary transition services; ➤ Consent is not required prior to administering a screening to determine appropriate instructional strategies; ➤ Under certain circumstances, consent is not required before conducting an initial evaluation for a ward of the state; ➤ A LEA may, but is not required to, use mediation or due process if the parent fails to respond to a request for consent for an initial evaluation, or to override a parent's refusal to consent for an initial evaluation or reevaluation; ➤ If a parent refuses consent, or fails to respond to a request for consent, for the initial provision of special education and related services, the LEA may not use mediation or due process to obtain consent. However, the LEA's failure to provide the special education and related services is not considered a denial of FAPE, and the LEA is not required to convene an IEP meeting or develop an IEP; ➤ If a parent of a parentally-placed private school child refuses consent for an initial evaluation or reevaluation, the LEA may not use mediation or due process to secure consent; however, the child will not be considered eligible for equitable services; ➤ Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services; and ➤ The LEA must make reasonable efforts to obtain informed parental consent for an initial evaluation and the initial provision of special education and related services. • LEAs using private insurance or public insurance and benefits to pay for services required for the provision of FAPE must provide the parent with notice and obtain

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			<p>parental consent as outlined in 8 VAC 20-81-300;</p> <ul style="list-style-type: none"> • An LEA must comply with a parent’s request to inspect and review their child’s educational records before a resolution session is convened in accordance with 8 VAC 20-81-210; • Modifications were made to the provisions outlining when parental consent is required prior to the disclosure of personally identifiable information, including that consent is required before personally identifiable information is shared between the LEA where a student resides and a LEA where the student is parentally-placed in a private school; • An LEA must provide the parent a copy of the child’s IEP at no cost; and • If a LEA makes the option available, parents of a child with a disability may elect to receive PWN, the PSD, and notice of a request for due process by electronic mail. <p>In accordance with guidance from the U.S. Department of Education and the provisions of the <i>Code of Virginia</i>, if an electronic document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. A definition of electronic signature is included.</p> <p>Many of the requirements outlined in the previous provisions at 8 VAC 20-80-70 F. were deleted from this section and consolidated into the new 8 VAC 20-81-300.</p> <p>For clarity:</p> <ul style="list-style-type: none"> • Expanded the provision permitting a hearing to be held to challenge in a child’s education records; and • Inserted into this section provisions that were previously included in 8 VAC 20-80 62 D. 6. regarding allowing a parent to audiotape or videotape a meeting. These provisions were expanded to grant parents the right to audiotape an Eligibility, IEP or Manifestation Determination Review meeting, and to provide LEA’s the option to have policies that prohibit, limit, or otherwise regulate the use of video recording devices at meetings, or audio or video recording devices at meetings other than Eligibility, IEP or Manifestation Determination Review meetings. <p>In response to public comment:</p> <ul style="list-style-type: none"> • Inserted a provision requiring LEAs to have a record of attempts to arrange a mutually agreed on time and place such as copies of correspondence sent to the parent, including written, electronic, or facsimile; • Inserted a requirement that a LEA may presume a parent has the authority to inspect and review a child’s education records unless provided a copy of a judicial order or decree, or other legally-binding documentation; and • Clarified that LEAs must ensure that electronic

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			communications regarding any matter associated with the child be part of the child’s education record.
72 Repealed	180 Transfer of rights to students who reach the age of majority	Repealed	<p>To comply with modifications to the Virginia Code, previous provision 8 VAC 20-80-72 C. 4. was revised to indicate that an adult student will not be considered competent if admitted to a facility for the training, treatment, and habilitation of persons with mental retardation, and to delete the section of that provision which stated that an adult student will not be considered competent if in a coma and eligible for admission to a state hospital.</p> <p>In response to public comments, inserted a requirement that at least one year before a student reaches the age of majority, the student’s IEP must include a statement that both the student and the parent(s) have been informed regarding the transfer of rights</p>
74 Repealed	190 Mediation	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • Mediation is available to resolve any matter arising under Part B of IDEA at any time a joint resolution is made to VDOE by the LEA and the parent, including matters arising prior to the filing of a state complaint or request for due process; • VDOE and the LEA may establish procedures to offer parents and schools that choose not to use the mediation process, an opportunity to meet with a disinterested party who would explain the benefits of, and encourage the use of, mediation. • Qualified mediators must be trained in effective mediation techniques; and • If an agreement is reached, the mediation process must conclude with a written, legally binding agreement that includes required elements. <p>To assist in complying with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge; and • Mediators must not have relationships or contracts with schools or parents outside of mediations assigned by VDOE.
76 Repealed	210 Due process hearing	Repealed	<p>To comply with federal requirements, numerous provisions were added, including the following:</p> <ul style="list-style-type: none"> • Timelines for filing a request for a due process hearing; • The LEA’s authority to use due process to obtain parental consent; • The LEA’s authority to request an expedited due process hearing; • Sufficiency of a due process notice, including the

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			<p>procedures to challenge the sufficiency of the notice, the procedures to amend the notice, and the implications if the notice is insufficient or fails to raise an issue, including that a hearing on the issue(s) may be delayed or denied;</p> <ul style="list-style-type: none"> • The LEA’s responsibility to document reasonable efforts to obtain parental participation in the resolution meeting; • A copy of the PSD must be provided by a LEA upon receipt of the parent’s first request for a due process hearing in a school year; • The qualifications of the Special Education Hearing Officer; • The LEA’s responsibilities when a dispute arises during the transition of a child with a disability from Part B to Part C; • An expedited hearing must be completed within 20 school days, and a written decision must be issued within 10 school days following the hearing; • A Special Education Hearing Officer’s decision must be made on substantive grounds of whether or not the child received FAPE, and procedural inadequacies may not lead to a decision that FAPE was not provided unless certain requirements are met; • The procedures for convening, and the timelines applicable to resolution sessions, including provisions regarding written settlement agreements; • Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parent(s) and the child involved; • A parent is entitled to an IEE at public expense if the parent disagrees with the evaluation completed in response to an order by the Special Education Hearing Officer; and • The timelines for appealing a due process decision to state or federal court. <p>In compliance with the <i>Code of Virginia</i>, an oath must be administered to witnesses testifying at a due process hearing and all witnesses testify under oath or affirmation.</p> <p>To ensure clarity and compliance with the federal requirements, the provisions previously outlined in 8 VAC 20-80-76 J.19. and K.13. were modified, and J.20. and K.12. were deleted.</p> <p>To ensure compliance with federal due process timelines, the procedures for objecting to the appointment of a Special Education Hearing Officer were expanded, and the instances in which an extension to the timelines could be granted, were limited.</p> <p>To ensure the effective and efficient operation of the due process system, the following provisions were added or modified:</p> <ul style="list-style-type: none"> • The request for a hearing must be made in writing to

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>VDOE, with a copy of the request delivered contemporaneously by the requesting party to the other party;</p> <ul style="list-style-type: none"> • If a request for a due process hearing is received solely by VDOE, VDOE will immediately notify the LEA, and forward a copy of the request as soon as reasonably possible, rather than within one day, as previously required; • Requirements for the duration of the Special Education Hearing Officer's authority were added; • All disclosures must be made and received by the Special Education Hearing Officer at least five business days prior to a hearing for expedited hearings, where previously a two business day timeline had applied; • A Special Education Hearing Officer now has five business days from the date of agreeing to serve for an expedited hearing, to complete the tasks that were previously required to be completed within two business days of the appointment; and five, rather than two, business days to document any changes in hearing dates and send information to all parties and VDOE; • The responsibilities of the Special Education Hearing Officer regarding conducting a pre-hearing conference were modified to include the Special Education Hearing Officer's responsibility to determine the scope of the conference, to document, if applicable, the reasons for not conducting a pre-hearing conference, and the pre-hearing determinations; • The Special Education Hearing Officer has the discretion to permit either party to raise an issue during the hearing which was not included in the notice by the moving party, depending on the circumstances. (Federal requirements limited this option only to those issues raised by the LEA.); • A Special Education Hearing Officer may not require parties to submit briefs as a condition of rendering a decision, but the Special Education Hearing Officer may permit such a submission on the parties' request; • The required elements of a due process decision were modified; • A Special Education Hearing Officer must issue a ruling in writing on any party's motion to quash or modify a subpoena, with a copy to all parties and VDOE; • The circumstances under which an extension to due process hearing timelines may be granted, and the procedures for granting such extensions; • VDOE must ensure that noncompliance findings are corrected not more than one year from identification, and LEAs must, on request, provide VDOE with documentation that the area(s) have been corrected; • The hearing officer has the discretion to hear disputes arising under IDEA and Section 504 as part of the same hearing process, if both are raised in the due process

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>notice;</p> <ul style="list-style-type: none"> • Findings of fact and decisions must be provided in writing to the parties and their attorneys, and not just to the attorneys, as previously required; and • The provisions regarding implementation plans were modified to require an implementation plan only for fully adjudicated decisions, rather than for any decision of the hearing officer involving the dismissal of a case or withdrawal of the due process request. <p>To provide clarity:</p> <ul style="list-style-type: none"> • Several provisions were collapsed, including the deletion of the provisions, which previously appeared at I.3.-I.5. were deleted; • Language was clarified regarding the role of the Supreme Court of Virginia versus the role of VDOE in the administration of the impartial special education due process system, including that VDOE uses the list of hearing officers maintained by the Office of the Executive Secretary of the Supreme Court of Virginia and its Rules of Administration; • Inserted the requirement that even if the applicable appeal period has expired, the record of the hearing and the findings of fact and decision must be provided to the parent(s) at no cost; • Indicated that the resolution period is part of, and not separate from, the expedited due process hearing timeline; • Required that parties may enter into a confidentiality agreement as part of their resolution agreement; • Outlined that VDOE will establish procedures for the following: Providing Special Education Hearing Officers specialized training; establishing the number of Special Education Hearing Officers who shall be certified to hear special education due process cases; and the process for evaluation, continued eligibility and disqualification requirements of Special Education Hearing Officers. Provisions regarding the certification of hearing officers were inserted based on guidance from the Office of the Attorney General.
78 Repealed	200 Complaint resolution procedures	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • New content requirements for a complaint, including contact information for the complainant, child-specific information, and a proposed resolution to the extent known; • A complaint must address an action that occurred not more than one year prior to the date the complaint is received, and can no longer include complaint allegations for a longer period of time, even if the violation is continuing; • The complaint must be simultaneously filed with VDOE and the LEA;

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<ul style="list-style-type: none"> • VDOE’s complaint notification to the LEA must include notice that the LEA has the opportunity to propose a resolution, and the parties have the opportunity to engage voluntarily in mediation; • VDOE must conduct an investigation which includes a complete review of all relevant documentation; and • The 60 calendar day timeline for a complaint investigation may be extended if the parties agree to the extension to engage in mediation. <p>To ensure compliance with the new federal requirements regarding sufficiency of the complaint, a provision was added outlining VDOE’s procedure if a complaint is insufficient.</p> <p>The requirement that VDOE send written notification of its receipt of a complaint to “other appropriate [VDOE] personnel” was deleted.</p> <p>For clarity, the following provisions were added:</p> <ul style="list-style-type: none"> • The LEA’s responsibility to respond after receiving notification of a complaint was added; • VDOE’s procedure if a complaint is filed by an individual other than the child’s parent(s) or their legal counsel; • VDOE will notify the parties in writing if the timeline for the complaint is extended; and • Parties to a complaint may appeal the complaint findings within 30 calendar days of the issuance of a decision, in accordance with procedures established by VDOE. <p>For clarity, current provisions 8 VAC 20-80-78 D. through G. were reordered to mirror the complaint process, and provision 8 VAC 20-80-78 F. was modified to clarify that the withdrawal of state and federal funds for special education may occur if a LEA fails to comply with applicable laws and regulations, but only following reasonable notice, and an opportunity for a hearing by the Board of Education.</p> <p>Given other modifications in the section, the language previously located in 8 VAC 20-80-78 C.3.a. and C.3.b. was deleted.</p>
80 Repealed	220 Surrogate parent procedures	Repealed	<p>To comply with federal requirements, the following provisions were added:</p> <ul style="list-style-type: none"> • Under certain circumstances, a judge may appoint a surrogate parent for a child who is a ward of the state; • A surrogate parent must be appointed within 30 calendar days of a determination that a surrogate is necessary; • A surrogate parent may not be an employee of a LEA; and • A temporary surrogate, who is a staff member of an emergency shelter, transition shelter, independent living program, or street outreach program, may be appointed to

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>an unaccompanied homeless youth, even though the surrogate is employed by an agency involved in the education or care of the child, if the surrogate otherwise meets the qualifications to be a surrogate parent.</p> <p>To comply with federal requirements, a LEA must appoint a surrogate parent for a child who is a ward of the state, or who is an unaccompanied homeless youth. However, language was inserted to clarify that the appointment of a surrogate in these circumstances, is only required if no parent can be identified, or the parent's whereabouts are unknown.</p> <p>Based on guidance from US DOE, former provision 8 VAC 20-80-80 C 2 c was deleted.</p> <p>To minimize state regulations that exceed the federal requirements:</p> <ul style="list-style-type: none"> • LEAs are no longer required to notify the custodial state agency charged with the responsibility for a child when a surrogate parent is appointed; • The requirement that a surrogate parent reside in the same general geographic area as the child was deleted; and • The training requirements previously outlined in 8 VAC 20-80-80 D. 1. b. have been modified to indicate that a surrogate parent must have knowledge and skills to ensure adequate representation of the child. Surrogate parents are no longer required to complete a LEA approved training session prior to representing the child or to attend annual training thereafter. <p>For clarity, language was revised to note:</p> <ul style="list-style-type: none"> • Any individual meeting the definition of "parent" may allow a relative or private individual to act as a "parent;" and • Each LEA must establish their policies and procedures relative to surrogate parents in accordance with Virginia's special education regulations.
90 Repealed	230 Local educational agency administration and governance	Repealed	<p>To comply with federal requirements, provisions were added which indicate:</p> <ul style="list-style-type: none"> • A public noneducational agency may not disqualify an eligible service for Medicaid reimbursement because that service was provided in a school context; • A timeline for the LEA's participation in a transition planning conference for a student transitioning from Part C to Part B; • New LEA responsibilities regarding migratory children and early intervening services; and • The LEA's responsibilities to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner. These new provisions outline the LEA's option to coordinate with the NIMAC.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>The requirements regarding the LEA's submission of an annual plan were revised to clarify the LEA's responsibility. Also, in accordance with federal modifications, LEAs are no longer required to submit copies of their policies and procedures, or the revisions of those policies and procedures to VDOE for approval; and LEAs are no longer required to develop and implement a comprehensive system of personnel development.</p> <p>The requirements regarding the local advisory committee (LAC) were modified:</p> <ul style="list-style-type: none"> • To indicate that a majority of the committee must be parents of children with disabilities or individuals with disabilities; • To require that the committee include one teacher with any additional LEA personnel serving only serve as consultants; and • To clarify the role of the LAC, including in the review of the school division's annual plan. <p>For clarification, a provision was inserted which outlines a LEA's responsibility for providing special education and related services to a child with a disability whose second birthday falls on or before September 30th.</p>
<p>100 Repealed</p>	<p>240 Eligibility for funding</p>	<p>Repealed</p>	<p>In compliance with federal requirements, LEAs are no longer required to submit copies of their policies and procedures, or the revision of those policies and procedures to VDOE for approval.</p>
<p>110 Repealed</p>	<p>250 State funds for local school divisions</p>	<p>Repealed</p>	<p>To comply with federal requirements, no state funding mechanism will result in placements that deny children with disabilities their right to be provided FAPE in the least restrictive environment.</p> <p>To ensure compliance with the <i>Code of Virginia</i>, provisions were expanded that outline VDOE's obligation to reimburse LEAs for the education of children with disabilities who are not residents, but who are in the LEA as a result of a placement in foster care, a group home, or an orphanage or children's home.</p> <p>The language regarding transportation which previously appeared at 8 VAC 20-80-110 B. 3., was deleted to comply with other regulations of the Virginia Board of Education.</p> <p>The provisions regarding the reimbursement for children participating in public regional special education programs was modified to provide the Superintendent of Public Instruction or designee with greater flexibility.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
120 Repealed	260 Federal funds	Repealed	<p>To comply with federal requirements:</p> <ul style="list-style-type: none"> • Provisions were added which outline the LEA’s responsibilities regarding the following: Excess costs; Maintenance of effort; and Early intervening services, including their relationship to a determination by VDOE that significant disproportionality based on race and ethnicity is occurring within the LEA in the identification of children with disabilities; • Part B funds may be used to supplement, but not supplant state and local expenditures for special education and related services; and • The language, which previously permitted the awarding of “sliver grants,” was deleted.
130 Repealed	270 Funds to assist state-operated programs	Repealed	<p>For clarity, a provision was added to indicate that state funds for the education of children with disabilities in regional and local jails are appropriated to VDOE for distribution.</p>
140 Repealed	280 Funding, withholding, and recovery of funds	Repealed	<p>To comply with the <i>Code of Virginia</i>, a provision was added which outlines that if the LEA fails to comply with the regulations established by the Virginia Board of Education, the Board may withhold the LEA’s state and federal funds for the education of children with disabilities, and use those funds to ensure the provision of special education and related services to such children.</p> <p>To comply with federal requirements, if a LEA is notified in writing by VDOE of a decision to withhold funds, the LEA must provide public notice to its jurisdiction regarding the pendency of the action.</p> <p>For clarity, provision 8 VAC 20-80-140 C. was modified to clarify that the withdrawal of state and federal funds for special education may occur if a LEA fails to comply with applicable laws and regulations, but only following reasonable notice, and an opportunity for a hearing by the Board of Education.</p>
150 Repealed	290 Appeal of administrative decision regarding funding	Repealed	<p>To comply with federal requirements, a LEA must appeal within 20 days of a decision made during an administrative hearing for VDOE to withhold its funding.</p> <p>To minimize state regulations that exceed the federal requirements, language regarding the rates set for the regional special education programs was deleted.</p>
152 Repealed	300 Use of public and private insurance	Repealed	<p>To comply with federal requirements, the section was modified to indicate that like with private insurance, if a LEA is seeking to access a child’s public benefits or insurance to provide the child with services required for FAPE, the LEA</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			must obtain informed parental consent each time that access to the child’s public benefits or insurance is sought, and provide the parent with notice containing specific elements, including that the parent’s refusal to allow access does not relieve the LEA of its responsibility to provide FAPE to the child at no cost.
155 Repealed	310 Attorneys’ fees	Repealed	To comply with federal requirements, provisions were added which outline who may be awarded reasonable attorneys’ fees, and that attorneys’ fees may not be awarded relative to a resolution session.
160 Repealed	320 Additional responsibilities for programs with children with disabilities in residence or custody	Repealed	To comply with federal requirements, the requirement for state-operated programs to develop a comprehensive system of personnel development was deleted, and requirements to ensure that personnel are appropriately and adequately prepared and trained, including requirements for paraprofessionals, were added.
190 Repealed	330 Compliance with § 504 of the Rehabilitation Act of 1973, as amended	Repealed	To ensure compliance with Section 504 of the Rehabilitation Act of 1973, as amended, LEAs are required to adopt grievance procedures that incorporate due process standards and provide for the resolution of complaints. For clarity, provisions were added indicating that if the LEA uses due process procedures to resolve complaints, the LEA is responsible for 100 percent of the reimbursement costs; and VDOE trains Special Education Hearing Officers on the requirements of Section 504.
190 Repealed	340 Special Education Caseload Staffing Requirements	Repealed	Deleted references to “Severe Disabilities.”

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5)

the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

During the development of the proposed regulations, VDOE has made efforts to minimize the number of rules, regulations, and policies to which the local educational agencies are subject, while still ensuring compliance with the IDEA 2004, its federal implementing regulations, and other laws and regulations that impact the provision of special education to students with disabilities in Virginia.

Small businesses will not be impacted by these regulations.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed revisions to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* are not anticipated to have an impact on the institution of the family or on family stability. However, parental involvement continues to be a fundamental component of the special education process.



COMMONWEALTH OF VIRGINIA

Department of Education

*Division of Special Education and Student Services
Office of Dispute Resolution and Administrative Services*

P.O. Box 2120

Richmond, Virginia 23218-2120

Special Education Proposed Regulations

Summary of Comments

May 19, 2009

PUBLIC COMMENT PERIOD:

The official public comment period extended from April 13, 2009 through May 13, 2009. Comments received, however, since the Governor approved the final regulations, were accepted and included in this summary. Comments were submitted electronically through e-mail and on the electronic Town Hall, and by fax.

- Total number of commenters (individuals and organizations): 127
- Total number of submissions (some commenters made multiple submissions): 129
- Total number of comments: 1801

The following summary is a composite of the public comments received during the comment period. The Summary includes the particular regulation cite as a point of reference and the Virginia Department of Education's response to the comment(s). Requests for a copy of this document may be made to:

Melissa C. P. Smith
Office of Dispute Resolution and Administrative Services
Virginia Department of Education
804-225-2013
E-mail: Melissa.Smith@doe.virginia.gov

Abbreviations for Commenters:

AO	Advocacy Organization	LEA	Local Educational Agency	SLP	Speech/Language Therapist or Pathologist
Att	Attorney	MD	Medical Doctor	Sped Adm	Sped Administrator
Cit	Citizen	Par	Parent	Sped Tch	Sped Teacher
IHE	Institute of Higher Learning – Colleges and Universities	PO	Professional Organization	SSEAC	State Advisory Committee
LAC	Local Advisory Committee	PTA	PTA		

Advocacy Organizations that submitted comments include:

- Autism Society of America – Central VA Chapter
- Autistic Self Advocacy Network
- Fairfax Area Disability Services Board
- Helping Hands, Inc.
- Just Children
- Parent Educational Advocacy Training Center (PEATC)
- VA Coalition for Students with Disabilities

Professional Organizations that submitted comments include:

- American Academy of Pediatrics, Virginia Chapter
- Learning Disabilities Association of VA
- Speech Language Hearing Association of Virginia
- VA Association for the Deaf

Issue	Source	Comments	VDOE Response
Support for the Final Draft Regulations (26 comments)	26 Sped Adm	Support the Virginia's draft special education regulations, as approved by the Board of Education on September 25, 2008.	VDOE will recommend that the Board of Education retain the draft regulations, as adopted on September 25, 2008.
General comments (2 comments)	1 Par	Parent expressed concerns that her child has not been reevaluated for 5 years, despite parental requests to do so, and that the student's recent disciplinary infractions are possibly connected to the LEA's failure to provide appropriate services.	The commenters do not appear to be providing comment regarding the provisions of the proposed special education regulations. However, it is noted that the parents retain the right to use the dispute resolution options of mediation, complaints, and due process to resolve issues regarding appropriate evaluation and identification procedures, the provision of appropriate services, and disciplinary procedures. Staff in the Office of Dispute Resolution and Administrative Services contacted each of these parents and reviewed their individual concerns and provided information on their dispute resolution options.
1 Par	Child has severe dyslexia and services provided for reading instruction have not worked and the school refuses to get something that is research based that shows progress in reading and spelling. School should have to do this.		
Program/Service Specific Comment (1 comment)	1 Par	Opposes the decision of the local LEA to eliminate summer school services since some students will be held back a year if they do not have the option of taking a course in summer school.	Neither the federal regulations, nor the <i>Code of Virginia</i> , provide the Board of Education the authority to promulgate special education regulations relative to summer school. If a child's IEP team determines, however, that a child requires Extended School Year Services (ESY) during the summer in order to receive a FAPE, then the LEA must provide those services in accordance with the child's IEP.
Parent Participation in Process – General (5 comments)	1 AO 1 Par	Oppose any changes that would limit the parent's right to be a part of the special education/IEP process or to provide consent. Rationales: <ul style="list-style-type: none"> • Parents need to be partners in the education process since they know their child better than the schools. • Parents are their child's best advocate. 	The final draft regulations continue to provide all rights and protections for children with disabilities and their parents, as outlined in the federal special education regulations, and as currently provided by the Virginia special education regulations, including the parent's right to participate in the special education/IEP process and to access dispute resolution options such as mediation, a state complaint, or a due process hearing.
1 Cit 1 Par	Oppose any reduction of the rights and protections for children with disabilities and their parent.		
1 Par	Supports allowing parents to decide how best to educate their children. Parents cannot trust the Commonwealth to teach kids. The Commonwealth only knows how to punish kids and parents with disabilities. Teachers/Educators are not properly trained, and they do not have children's best interest in mind. They just want a paycheck.		

Issue	Source	Comments	VDOE Response
Regulations Revision Process (2 comments)	1 AO	Suggests replacing “shall” with “must” to comply with the federal regulations to eliminate ambiguity between federal and state regulations.	The determination regarding whether to use “shall” versus “must” was determined in accordance with guidance from staff from the <i>Virginia Register of Regulations</i> regarding the required format for Virginia Regulations. In the next revision, public comment will be gathered prior to the development of draft regulations and the regulations will be drafted consistent with the direction from the Board of Education.
	1 AO	Supports the changes made from the proposed to the final regulations, but continues to disagree with those provisions which were not changed back. Supports the consideration to restoring those provisions in the next revision.	
Alignment with other regulations and statutes (1 comment)	1 PO	Supports the compliance with federal mandates to ensure that VA continues to receive funding for special education services.	The proposed regulations are consistent with federal regulations and adherence to these regulations will result in federal funding consistent with authorization and appropriation from Congress.
Exceeding Federal Regulations (2 comments)	1 LAC	Rejects arguments that the regulations must be limited to align with the federal regulations. SEAs have the right/obligation to tailor their programs to fit the needs of their citizens within the scope of state law.	Consistent with direction from the Board of Education, the regulations were drafted in order to provide more flexibility to localities. This was consistent with direction from the federal regulations that states should consider minimizing regulations which would save localities from additional expenses in process that could be directed toward services to children and youth with disabilities.
	1 LAC	Rejects the argument that state regulations must be minimized to prevent imposing an undue burden on LEAs.	
Preamble Content (1 comment)	1 Par	We support the addition of the closing paragraph, “These requirements are based on the fundamental notion that special education and related services are to be designed to meet the unique educational needs of children with disabilities, provide educational opportunity in the general curriculum to the extent possible in accordance with each child’s individualized education program, and prepare children with disabilities for opportunities in post-secondary education, employment, and independent living.”	VDOE will recommend that the BOE retain the language as it is currently in the BOE’s draft regulations, as adopted on Sept. 25, 2008.
Definitions – Agreement 8 VAC 20-81-10 (1 comment)	1 AO	Opposes permitting an “agreement” to be verbal, rather than written. For clarity, all agreements should be in writing.	Although LEAs are encouraged to maintain written documentation of all agreements between the LEA and the parent, in an attempt to provide greater flexibility, the federal regulations specifically permit the use of unwritten agreements in certain circumstances. Thus, VDOE declines to recommend additional requirements in this area.
Definitions/Eligibility – Autism 8 VAC 20-81-10; 8 VAC 20-81-80 L. (35 comments)	2 AO 1 Cit 1 MD 6 Par	Support inserting “spectrum”. “Autism” means a developmental spectrum disability significantly affecting verbal and nonverbal communication.	The proposed regulations include the language from the federal regulations. To ensure greater consistency in the identification of students with autism, eligibility criteria were included in 8 VAC 20-81-80. The proposed definition does not limit a LEA from identifying a child who manifests the characteristics after age 3 and indicates that the characteristics are “generally evident before age 3.”
	2 AO 1 Cit 1 MD	Supports deleting “A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this definition are satisfied.”	

Issue	Source	Comments	VDOE Response
	6 Par		
	2 AO 1 Cit 1 MD 6 Par	Supports inserting "Difficulties in abstract thinking, flexible thinking, social awareness and judgment may be present as well as perseverative thinking. Delays in fine and gross motor skills may also be present. The order of skill acquisition frequently does not follow normal developmental patterns."	
	1 Par	Opposes changes to autism that would limit - needs to be more general and allow for autism spectrum.	
	1 AO	Suggests expanding the definition of autism to include the full autism spectrum ranging from "classic autism," to Asperger Syndrome, PDD-NOS, Rett Syndrome, and Childhood Disintegration Disorder. This will prevent mis-labeling and denial of eligibility for FAPE.	
	1 Par	Suggests amending the definition as follows: "Autism means a neurological spectrum disorder, making it difficult to process changes of information that the brain receives. Autism is a world where unexpected change and unpredictable or uncertain situations are threatening or fearful. Autism makes it difficult to deal with problems that don't have a clear right or wrong answer and inhibits the thrill of collaboration to produce something that is a true co-creation. Autism prevents real curiosity and a lack of empathy in friendships, never learning to value other's ideas as much as one's own. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements. Delays in fine and gross motor skills may also be present. The order of skill acquisition frequently does not follow normal developmental patterns. Deficits of people with autism include: Emotional (referencing when uncertain); Social (moment-to-moment regulation); Communication (for experience sharing); Memory (personal episodic or meaningful memories); Cognitive (concept formation, contextual problem-solving, flexible thinking, subtle relationships, strategy formation)." These changes would help the IEP team focus on additional considerations when developing the IEP. Changes are framed as characteristics exhibited on the autism spectrum, not as criteria.	
	1 AO	Suggests addressing the under diagnosis of autism spectrum in rural, minority and low-income communities by dedicating funding towards training and other identification measures through the state Child Find infrastructure.	
	1 Cit	Opposes eligibility criteria in the proposed regulations since it may exclude children with an autism spectrum disorder who do not fit the narrow diagnostic criteria contained in the proposed regulations. Federal law includes autism as a covered disability under IDEA; it does not endeavor to define the various educational criteria for the autism disability as a spectrum disorder. Furthermore, if VDOE sets specific criteria for autism, which it has not done previously, it will be taking away flexibility from LEAs in making individual eligibility determinations.	

Issue	Source	Comments	VDOE Response
Definitions - Child Study Committee 8 VAC 20-81-10 (10 comments)	2 AO 1 Cit 1 MD 6 Par	Support retaining the definition of Child Study Committee from the 2002 regulations.	While the term, Child Study Team, is not included in the proposed final regulations, requirements for a team which can process referrals were reinserted in 8 VAC 20-81-50. Included are requirements for team composition as well as timelines for addressing a referral.
Definitions - Child with a Disability 8 VAC 20-81-10 (1 comment)	1 Par	Supports the inclusion of the DD label in the definition of “child with a disability.”	Language was included in this definition to include developmental disability if a locality recognizes this category as a disability in accordance with 8VAC20-81-80 M.3.
Definitions/Eligibility – Developmental Delay 8 VAC 20-81-10 8 VAC 20-81-80 N. (80 comments)	5 AO 1 Att 25 Cit 1 IHE 1 LAC 1 MD 35 Par 1 PTA 1 SLP	Oppose limiting the use of developmental delay for children through age 6, and support the use of developmental delay for ages through age 9. Reasons cited included: <ul style="list-style-type: none"> • Fewer children will have access to special education services. • This is not the solution to disproportionality. Coordinated early intervening services should be used to address disproportionality. • The new age of eligibility denies young children with disabilities access to services. • It may not be possible to make a definitive diagnosis at age 6, in part, because assessments are more accurate with older children. • Coordinated early intervening services could help a student to do just well enough that they are not eligible for special education and related services, causing a loss of services during a formative period of development. • Rushing to label a child’s disability may have serious long-term implications for the child’s education and emotional development. For example, labeling a student with a stigma-laden label will drive low expectations and may lead to the child’s segregation such that the child may never receive quality research-based instruction. • Gifted students are not given their “label” until 3rd grade. • This permits children to get the extra help that they need, while still mainstreaming them for part of the day. • Limiting the age range limits the time that educators and other professionals need to provide interventions that will allow children to develop and receive a strong educational foundation. • Maintaining flexibility for LEAs ensures that children are not inaccurately labeled at a young age. • Removing a possible label will set children up for failure. • Ensures that all cases are thoroughly recognized, studies and need met. • Allowing DD to age 9 avoids inaccurate labeling and thus inappropriate or unnecessary services. • Limiting DD to age 6 will result in children identified at age 5 only receiving one year of services before being forced to find another label, potentially resulting in a misdiagnosis and skewing the results of services. 	Based on analysis of December 1 Child Count from 2005 and 2006, the Board of Education proposed narrowing the age range for Developmental Delay to ages 2 to 5 inclusive. Virginia has experienced a disproportionate number of minority students (primarily African-American) ages 6 to 8, inclusive, being identified as having a Developmental Delay. In response to public comments received during the previous public comment period, however, the Board of Education was persuaded by the following two issues to modify the proposed age of eligibility for developmental delay to 2 to 6, inclusive. The Board continues to support this position. <ul style="list-style-type: none"> • It is acknowledged that for some students, prior to the age of 6, there may be insufficient data to make an eligibility determination other than Developmental Delay. To provide greater protections for these students, the Board of Education expanded the age of eligibility range from 2 to 5, inclusive, to 2 to 6, inclusive. • Under the federal regulations, at 34 CFR § 300.111, each LEA has the local option of determining whether or not to use Developmental Delay as an eligibility category. If a LEA’s local policies and procedures include the use of Developmental Delay, the LEA must comply with the age of eligibility criteria established in Virginia’s special education regulations. In light of the noted disproportionality issue, LEAs have indicated that if Developmental Delay is defined as ages 2-9, inclusive, local school boards will consider eliminating Developmental Delay as an eligibility category. The Board of Education is not proposing to eliminate developmental delay as an eligibility category. Rather, the Board of Education has proposed to modify the age of eligibility for which a child might qualify as a child with a disability under the “developmental delay” category.

Issue	Source	Comments	VDOE Response
	1 Par	Opposes limiting the use of developmental delay for children through age 6, and supports the use of developmental delay for ages through age 9. Limiting the DD age range harms children with so-called “mild” disabilities by allowing them to fall through the cracks. They do not meet the more stringent criteria for another categorical label and they are exited from IDEA services and miss early interventions that would aid in preventing them from falling behind until they fall so far behind that they again qualify for services. This is at odds with the IDEA’s guidance. Limiting DD mandates that a label be applied too soon, putting children at risk of being mislabeled due to the imprecision of evaluations at elementary ages. Prematurely labeling children with other than the DD label sets up an unfortunate cycle, where the label prescribes a categorical “program” which drives goals, services, supports, and placement, rather than the child’s unique needs and abilities. Disproportionality results not from DD, but rather “lack of cultural awareness, teacher/administrator attitude toward or misunderstanding of “difficult” or “problem” students, health and nutrition deficits that limit academic performance and language barriers.” Reducing the age range for the DD label but failing to address the true causes for disproportionality will not reduce the impact of these factors. The change will only hurt children 7 through 9 who need the DD label.	As noted above, in accordance with the federal regulations, at 34 CFR § 300.111, if a LEA’s local policies and procedures include the use of Developmental Delay within the LEA, the LEA must comply with the age of eligibility criteria established in Virginia’s special education regulations. The federal regulations do not permit the age of eligibility for Developmental Delay to vary between LEAs.
	1 Par	Opposes limiting the use of DD for children ages 2 to 6 and supports the use of developmental delay for ages 2-8, allowing LEAs flexibility to serve students appropriately. By restricting the use of DD through age 6, Virginia will limit opportunities for students with disabilities.	
	1 SSEAC	Supports retaining the age of eligibility requirements for developmental delay, as outlined in the 2002 Virginia regulations, allowing the LEA the option to use developmental delay as an eligibility category for children ages 5-8, and providing the LEAs with greater flexibility.	
	1 Cit 1 Par	Oppose the elimination of the developmental delay category. One commenter believes to do so would result in labeling DD students as students with mental retardation (MR), when they are not MR, but DD.	
	2 Sped Adm	Supports revising the age of eligibility for DD to 2 through 5, since this is the natural transition point from the preschool to school-age program.	
	1 LEA	Supports limiting the use of DD for children ages 2 to 6, as proposed.	
	1 Par	Suggests that LEAs for whom DD through age 9 causes increased disproportionality be permitted to set a local policy restricting DD to a subset of 2-8, while permitting LEAs for whom the use of DD decreases disproportionality to continue using DD through age 9.	

Issue	Source	Comments	VDOE Response
<p>Definitions - Functional Behavioral Assessment</p> <p>8 VAC 20-81-10</p> <p>(55 comments)</p>	<p>2 AO 1 Cit 1 MD 6 Par</p>	<p>Support making the following change, FBA "means an evaluation with parent participation process to determine the underlying cause or functions of a child's behavior...." According to previous OSEP letters, an FBA is an evaluation, not an assessment. Parent participation in this process will provide additional insights and experience into the evaluation and increase the likelihood that the parent will agree with the evaluation.</p>	<p>Since the IEP team determines the parameters of the FBA, the parent is an essential part of the process. Specific data to be collected or used as the basis of the FBA is the decision of the IEP team and based on the specific behavior(s) of concern. If the IEP team determines that appropriate data exists, it would be inappropriate to require additional data collection. If the FBA is not a review of existing data conducted at an IEP meeting, parental consent is required for the assessment. This position is consistent with USDOE's interpretation of these requirements. Language was added in the final proposed regulations to include "new testing data as determined by the IEP team," and language was modified from "be" to "include."</p>
	<p>1 AO 1 Att 20 Cit 1 LAC 20 Par 1 PTA</p>	<p>Oppose permitting FBA to be only a review of existing data without parental input. The definition should require an FBA be an evaluation that consists of a systemic collection and analysis of direct and indirect data that may include a review of existing data. Commenters noted:</p> <ul style="list-style-type: none"> • It is to everyone's benefit to determine why a child is misbehaving, especially if the behavior is a manifestation of the disability, and a review only may result in hastily compiled observations to justify disciplinary action. • Frequently, schools conduct FBAs in name only, failing to explore the actual function of a child's behavior and hastily compiling previous observations into a paper trail to justify disciplinary action. Failure to effectively investigate behavior which impedes learning defeats the purpose of the FBA to change such behavior and allow the student to participate as much as possible in a least restrictive environment. To determine an appropriate BIP, a formal FBA must be conducted, and for an assessment to be effective, the parents must participate as a matter of parental consent. 	
	<p>1 Par</p>	<p>Supports the inclusion of a reference to "evaluation" in the definition of "functional behavior assessment, but remain concerned that this reference is sufficient to trigger parental safeguards.</p>	
<p>Definitions/Eligibility – Hearing Impairment</p> <p>8 VAC 20-81-10 8 VAC 20-81-80 O.</p> <p>(1 comment)</p>	<p>1 Par</p>	<p>Supports expanding the definition of "Hearing impairment" to include children with impaired neural function of the audition system. In Virginia, such children are typically identified under other categorical labels that obscure the nature and impact of the disability, resulting in confusing the auditory disability with ADD, dyslexia, Aspergers, or other speech and language impairments. Such children often then do not receive appropriate intervention and supports, including audiologic rehabilitation. Identifying children with impaired neural function of the audition system—which is already included in the medical category of hearing loss—within the "Hearing impairment" category would prevent much of confusion and allow LEAs to better understand the nature of the disability and to better serve children with the disability.</p>	<p>The definition is consistent with the federal regulations. Regardless of identification label, however, IEPs for students are not limited to services based on a categorical label. Instead, it is the responsibility of the IEP team to address the special education and related services needs based on the student's needs and not a label.</p>
<p>Definitions - Interpreting Services</p> <p>8 VAC 20-81-10</p> <p>(12 comments)</p>	<p>2 AO 1 Cit 1 MD 6 Par</p>	<p>Recommend amending the definition as follows, since there are children who are not deaf and hard of hearing who use interpreting services as their main source of communication: "Interpreting services" as used with respect to children who are deaf or hard of hearing, means services provided by personnel who meet the qualifications set forth under 8 VAC 20-81-40 and includes <u>translating from one language to another (e.g., sign language to spoken English)</u>, oral <u>interpreting and</u> transliteration services....</p>	<p>The proposed provisions are consistent with IDEA and Virginia's licensure provisions. The Board of Education amended the definition, however, to include interpreting services for children who are deaf-blind and that a child who is not deaf or hard of hearing, but who has language deficits, may receive interpreting services as directed by the child's Individualized Education Program.</p>

Issue	Source	Comments	VDOE Response
	1 Par	Supports the clarification to the definition of "interpreting services."	
	1 AO	Opposes the limitation of interpreting services and suggests that interpreting services may be beneficial to students with down syndrome, apraxia, autism, and other disabilities.	
Definitions - Level 1 Services 8 VAC 20-81-10 (11 comments)	2 AO 1 Cit 1 MD 6 Par	Support retaining the current definition which includes "and related services" for students receiving Level 1 services, since children receiving Level 1 services may also receive related services.	Level 1 services are defined by the instructional services provided by a special education teacher because of the funding mechanism that provides state funding to LEAs. Level 1 and level 2 services do not include related services personnel since the services provided by related services personnel do not apply to the funding of teachers. The services provided by related services personnel also do not affect the responsibilities of the special education teacher providing the service.
	1 Par	The definition of "level 1 services" should continue to include "special education <i>and related services</i> " for consistency with the Level 2 formula. The definition should also reference the tables in 8VAC20-81-340 to ensure LEA's are using the full correct formulas rather than recording students in mostly self-contained settings as having a value of 2 and students mostly in general education settings as having a value of 1.	
Definitions/Eligibility – Intellectual Disability 8 VAC 20-81-10 8 VAC 20-81-80 P. (11 comments)	2 AO 1 Cit 1 MD 7 Par	Support inserting the definition used by the American Association on Intellectual and Developmental Disabilities (AAIDD): "Intellectual disability means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. This disability originates before the age of 18." Rationales: <ul style="list-style-type: none"> • States are permitted to use a different term, and VDOE should be proactive in complying with legislative changes made by the Virginia General Assembly. • The AAIDD does not differ substantively from the proposed language; however, many persons with disabilities and their families prefer the AAIDD definition because it does not rely on the term "subaverage" and is thus generally perceived as less pejorative and less devaluing. • The AAIDD specifies "age of 18," which is in Virginia the precise age of majority and the age generally used in other contexts where ID is utilized for services or legal matters, rather than the more vague perimeters of "the developmental period that adversely affects a child's educational performance." However, if there is concern related to potential undue restrictiveness in the American Association on Intellectual and Developmental Disabilities definition, the wording might be revised to read, <u>"means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. This disability originates before the age of 18 that is manifested during the developmental period that adversely affects a child's educational performance"</u> 	The Board of Education modified the language in the regulations to substitute intellectual disability for mental retardation. The definition is consistent with federal regulations.
Definitions/Eligibility – Orthopedic Impairment	1 AO	Supports using the term "physical disability" rather than "orthopedic impairment."	The language in the draft regulations is consistent with the language and the requirements outlined in the federal

Issue	Source	Comments	VDOE Response
8 VAC 20-81-10 (2 comments)	1 AO	Supports revising the phrase "that adversely affects a child's educational performance" to "that adversely affects a child's educational access."	regulations, at 34 CFR § 300.8(c)(8). To ensure clarity and avoid confusion, VDOE declines to adopt the commenter's suggested language.
Definitions/Eligibility - Other Health Impairment 8 VAC 20-81-10 8 VAC 20-81-80 Q. (11 comments)	2 AO 1 Cit 1 MD 6 Par	Recommend retaining arthritis and tuberculosis on the list of examples of health impairments that are covered by this category. Virginia has a long-standing policy of including these two conditions in the definition.	The proposed regulations provide examples consistent with language in the federal regulation. "But not limited to" is redundant since "such as" indicates a non-exhaustive list.
	1 Par	The definition of "Other Health Impairment" should be revised to "that is due to chronic or acute health problems such as, <u>but not limited to,</u> " before the listing of examples to ensure that relevant conditions can be included even if the listing of examples does not include a specific condition and to eliminate the need for an exhaustive listing of every condition that might be covered by OHWe without restricting teams in fully utilizing this categorical labeling appropriate to children's needs because a condition is not listed.	
Definitions – Parent 8 VAC 20-81-10 (10 comments)	2 AO 1 Cit 1 MD 6 Par	Recommend inserting the underlined language at the end of subdivision 4. to ensure that this provision complies with subdivision 2. "unless the natural or adoptive parent does not have legal authority to make educational decisions for the child <u>or a judicial decree or order has identified another specific person under subdivision 1.a. through 1.e to make educational decisions on behalf of the child.</u> "	VDOE does not believe the added language is necessary.
Definitions – Private School Children with Disabilities 8 VAC 20-81-10 (10 comments)	2 AO 1 Cit 1 MD 6 Par	Support expanding the definition to include children 3-5 who are parentally-placed in a private school that does not qualify as an elementary school. Currently, IDEA regulations require that the school meet the definition of an elementary school for the student to qualify for services. Since most private preschools are not in elementary schools, such students would not qualify for services under the IDEA provisions for "parentally-placed private school children."	VDOE does not believe this is necessary since the requirements for a LEA to provide a private placement are for all students who are found eligible for special education. Likewise, students whose parents place them in private schools include students from 2 – 21, inclusive. The LEA is responsible for determining whether the private school meets the definition of elementary school. (See Superintendent's Memo, Interpretive, No. 1, Feb. 9, 2007)
Definitions/Eligibility - Specific Learning Disability 8 VAC 20-81-10 8 VAC 20-81-80 K. (16 comments)	1 Sped Tch	Supports the definition and description of Dyslexia, which is included in the draft language. It provides clarity for LEAs and should enable more children to receive the instruction they need.	Dyslexia is specifically included in the federal definition and was expanded in the draft regulations to clarify the meaning of the term.
	2 AO 1 Cit 1 MD 1 PO 7 Par	Support removal of the paragraph regarding dyslexia because it improperly narrows the requirements of IDEA 2004 and the federal regulations. This may result in denial of services to VA students who have the right to IDEA eligibility under federal regulations.	
	1 LEA	Opposes the proposed inclusion of the explanation of dyslexia as part of the definition of "Specific Learning Disability."	

Issue	Source	Comments	VDOE Response
	1 AO	Suggests retaining the language defining dyslexia as found in the federal regulations. The proposed revision of the definition of dyslexia is too narrow and may result in the denial of appropriate services.	
	1 Par	Opposes local policies which indicate that students with dyslexia may not be identified as a student with a learning disability.	
Definitions – Supplementary Aids and Services 8 VAC 20-81-10 (11 comments)	2 AO 1 Cit 1 MD 7 Par	Support the addition of the underlined language to this definition: <u>“Supplementary aids and services includes, but is not limited to: providing preferential seating; frequent breaks; extended or additional testing time; allowing tests to be dictated; a functional behavioral assessment and behavioral intervention plan; one-to-one aides; and, interpreting services to students with disabilities.”</u> The provision of supplementary aids and services is crucial to ensuring LRE. Including a non-exhaustive list gives guidance to schools and parents, encourages IEP teams to more thoughtfully consider LRE during placement decisions, and brings this definition in line with the definition of related services, which includes a list of examples.	Since supplementary aids and services vary and are not intended to be a menu of selections, it is inappropriate to add the suggested language. It is the responsibility of the IEP team to determine what the child requires for supplementary aids and services in order to meet the child’s educational needs.
Definitions – Timely Manner 8 VAC 20-81-10 (10 comments)	2 AO 1 Cit 1 MD 6 Par	Support revising the definition as follows: “Timely manner” if used with reference to the requirement for National Instructional Materials Accessibility Standard 8 VAC 20-81-230.K means that the local educational agency shall take all reasonable steps....” The definition should not be limited to use with NIMAS, but rather should be tied to the provision of proper instructional materials, regardless of the agency/method LEAs adopt. Some materials may not be available through NIMAS.	This language is consistent with the federal regulations. It is the responsibility of the LEA to ensure that students have the materials needed.
Functions of VDOE – General 8 VAC 20-81-20 (22 comments)	1 Par	Suggests that the state implement a measurement to enforce the provision 8 VAC 20-81-20 5. so that for example, LEAs would be required to provide the option of sign language as a foreign language, as identified in a previous Supt’s Memo, especially for those students with disabilities who have speech disabilities and could benefit from the use of sign language.	8 VAC 20-81-20 5. requires each LEA “to take steps for its children with disabilities to have available to them a variety of educational programs and services available to nondisabled children in the areas served by the LEA, including art, music, industrial arts, consumer and homemaking education, and career and technical education.” This provision mirrors the federal provision 34 CFR 300.110. The other provisions reflect the federal language. Therefore, VDOE declines to recommend additional changes.
1 Par	Supports the revision to <u>“Receive</u> special education and related services, even though they have not failed or been retained in a course or grade, and are advancing from grade to grade.”		
2 AO 1 Cit 1 MD 6 Par	Support inserting "modifications" in subdivision 4.: "Ensure that each [LEA] includes all children with disabilities...with appropriate accommodations, <u>modifications</u> , and alternate assessments where necessary...." Modifications to assessments is an IEP consideration.		
2 AO 1 Cit 1 MD	Support retaining the underlined language, which is included in the current regulations, at 8 VAC 20-80-20 17., at the end of subdivision 22.: "Disburse the appropriated funds for the education of... children with disabilities <u>including</u>		

Issue	Source	Comments	VDOE Response
	6 Par	<u>submission of revised policies and procedures for provision of special education and related services.</u> "	
Functions of VDOE – SSEAC 8 VAC 20-81-20 15. (10 comments)	2 AO 1 Cit 1 MD 6 Par	Supports amending subdivision 15. b. (6) to insert the underlined language: "Review the Annual Plan, <u>including new or amendments to policies and procedures for the provision of special education and related services</u> , submitted in accordance with 8 VAC 20-81-230. B.2....."	The proposed regulations are consistent with federal requirements for submission of information to VDOE for the annual plan. VDOE does not believe it is necessary to collect and approve local policies and procedures since LEAs are required to comply with all state and federal requirements and they are monitored through complaints, due process hearings, and VDOE's federal monitoring activities.
Staffing Requirements – Caseloads 8 VAC 20-81-40 A. 3. (1 comment)	1 Par	This regulation should be clarified by the adding that direct/ indirect services are specified by the IEP: "Special education services include those services provided directly to the student and those provided indirectly, <u>as specified in the child's IEP.</u> "	VDOE does not believe further clarification is needed since all special education and related services are required to be included in a student's IEP.
Staffing Requirements - General (except length of day) 8 VAC 20-81-40 (1 comment)	1 Par	The special education caseload staffing requirements tables should be retained for ease of reference.	Tables which address caseload numbers are included in the appendix. The tables previously included addressing endorsement requirements are not included since endorsement requirements have changed consistent with new categorical requirements and are managed through the licensure regulations.
Staffing Requirements – Highly Qualified 8 VAC 20-81-40 (1 comment)	1 Par	Opposes any action that will take away the state or local accountability for qualified teachers for students with disabilities. Students with disabilities need qualified teachers.	The state is required via federal regulations to ensure that teachers are highly qualified. Licensure regulations and data collection annually ensures that teachers are highly qualified.
Staffing Requirements – Interpreters 8 VAC 20-81-40 E. (12 comments)	1 PO	Opposes the standard for interpreters to include a passing score of 3.5 on the EIPA. Does not believe this provides adequate interpreting for students since this would equate to the ability to interpret 70% of the event. Believes standard should be raised, not lowered and asks that EIPA be stricken from the regulations.	EIPA was suggested as an alternative for Educational Interpreters based on recommendations from previous public comment periods. Providing this as an option allows greater flexibility for interpreters to demonstrate their level of competency. VDOE does not believe that additional clarifications are necessary. For a child who is deaf or hard of hearing, the draft regulations require that if the student requires the use of an educational interpreter, that interpreter must meet the qualifications outlined in 8 VAC 20-81-40 E. However, for a child who is not deaf or hard of hearing, but for whom the IEP team has determined that some sign language services are necessary to address the child's expressive and receptive language needs, the regulations
1 PO	Opposes the provision that allows the school division to decide on qualifications for the use of sign language for students who are not deaf or hard of hearing. Does not think this will ensure bona fide language such as ASL.		
2 AO 1 Cit 1 MD	Support deleting subdivision E.4. which states " <u>4. For a child who is not deaf or hard of hearing but for whom sign language services are specified in the IEP to address expressive or receptive language needs, the sign language services</u>		

Issue	Source	Comments	VDOE Response
	6 Par	shall be provided by an individual meeting the requirements determined appropriate." LEAs should not be permitted to set their own standards for interpreters. There needs to be a consistent standard to ensure qualified interpreters for all students.	provide the LEA with the flexibility to assign a staff person who can most appropriately meet the child's unique educational needs, which may or may not require that the staff member hold a valid VQAS Level III or equivalent certification.
Child Find (includes screenings or public awareness) 8 VAC 20-81-50 (10 comments)	2 AO 1 Cit 1 MD 6 Par	Support reinserting timelines for the completion of screenings in subsection C.: "Each local school division shall have procedures, including timelines, that ensure that all children are screened within 60 business days of enrollment, including transfers from out of state as follows:....d. Children who fail any of the above screenings may be rescreened after 60 days if the original results are not considered valid. e. The screening may take place up to 60 business days prior to the start of school. The local educational agency may recognize screenings reported as part of the child's pre-school physical examination...if completed within the above prescribed time line.f. Children shall be referred to the special education administrator or designee no more than 5 business days after screening or rescreening if results suggest that a referral for evaluation...." Maintaining consistent timelines sets a stronger measure of accountability.	VDOE will provide a guidance document to localities specifying the screening requirements, including timelines. Since these fall under other sets of regulations and are sometimes considered health screenings, it was not considered appropriate to provide the specificity in these regulations. A guidance document will allow for changes as necessary to meet any changing requirements or recommendations.
Child Study Teams 8 VAC 20-81-50 D. (109 comments)	1 Par	Opposes the elimination of Child Study Committees, with state-wide uniform procedures and timelines, as it denies parents the right to participate in the referral and screening process.	In response to significant public comment, the draft special education regulations, as approved by the Board of Education on September 25, 2008, reinserted all of the existing regulatory requirements regarding Child Study Committees, including timelines, required team members, and procedures for the referral process. However, the revisions continue to permit LEAs the flexibility to use scientific, response to intervention methods with procedural protections for the child suspected of having a disability intact. There have been no changes to the provisions regarding Child Study Teams since the Board of Education's September 25, 2008 approval.
1 AO 1 Att 19 Cit 19 Par 1 PTA	Oppose elimination of current Child Study Committees requirements because it removes the protection of timelines and consistency across divisions as well as the guarantee that parents will participate in the referral process.		
1 AO 1 Att 19 Cit 19 Par 1 PTA	Oppose the elimination of the requirement that classroom interventions not delay a special education evaluation.		
1 LEA	Supports previous proposed regulations regarding Child Study Committees, which provided LEAs the latitude to tailor their procedures to local needs; however, this LEA will comply with the current regulations, as proposed, while ensuring parental participation in the process.		
1 AO	Opposes elimination of current Child Study Committee requirements, because it may result in missed opportunities for the identification of children with disabilities which will adversely affect subsequent eligibility for services at an appropriate age.		
1 Par	Opposes elimination of Child Study Committees with timelines since believes it is an important and valuable tool which should be preserved. Without this, parental		

Issue	Source	Comments	VDOE Response
		involvement could be negatively impacted.	
	2 AO 1 Cit 1 MD 6 Par	Support deleting the proposed section on referrals at D. 1. through D. 6., and reinserting the current Virginia regulations regarding child study committees. In the alternative, support modifying D. 2. a. to require the parent to be a member of the team. The elimination of Child Study eliminates uniformity among LEAs regarding screening for children with disabilities, but at a minimum, parents must be guaranteed participants to prevent further alienation of parents from the screening process.	
	2 AO 1 Cit 1 MD 6 Par	If the referral section is maintained in its current form, support the following change in D. 4. (b) "If the child has not made adequate progress after an appropriate period of time 60 calendar days of during the implementation of the interventions, the team shall refer the child..." While children may respond in different timeframes, it should be clear within 2 months whether more specialized services are needed.	
	1 Par	Opposes the removal of parents from the Child Study Committee. Parents should continue to be listed in the team composition whether or not the parents provide the initial referral. In addition to bringing their greater knowledge and experience with the child, parents bring to the committee the family's perspective and culture. This also provides parents greater familiarity with the process, and the opportunity to make available to the team information and/or evaluation results.	
	1 Par	Suggests that parents not be required to participate and that in the interest of timely identification and service provision to children, the meeting may proceed in their absence if they do not wish to participate.	
	1 Par	Supports the inclusion of needed team composition (with the exception of the removal of parents), timelines, and other referral framework added to the proposed regulations in the area of the Child Find referral process.	
Evaluation – Initial (except timeline or consent) 8 VAC 20-81-60 (11 comments)	1 Par	Supports revising 8 VAC 20-80-60, B 1 d as follows : "Inform the parent(s) of the procedures for the determination of needed evaluation data and provide parents the opportunity to offer any evaluation information that they may have <u>and wish to have considered by the Child Find team.</u> " Parents should be made aware of their opportunity to have any evaluation information that they may have considered by the eligibility team; however, they should not be placed under an obligation or perceived obligation to share this information, which often includes HIPPA protected records that may or may not be relevant to eligibility, with the LEA if they choose not to.	VDOE believes that it is appropriate for a LEA to request whatever evaluation information a parent has for the child. Whatever information a parent may have will add to an informed discussion and a meaningful decision by the committee.

Issue	Source	Comments	VDOE Response
	2 AO 1 Cit 1 MD 6 Par	Support deleting language from B. 1. b as follows: "Inform the parent(s) of the procedures for the determination of needed evaluation data and request any evaluation information the parent(s) may have on the child;" This language may be misconstrued as a demand, rather than an option for parents." This may be construed by parents and educators as a demand instead of an option and should be removed.	
Timeline - Evaluation/Eligibility 8 VAC 20-81-60 B. 1. g. & h. (71 comments)	1 Par	Opposes permitting unnecessary extensions of the evaluation/eligibility timeline, denying parents the guarantee of timely evaluations.	Virginia has a long-standing 65 business day timeline for which there was support during previous public comment periods. The Board of Education maintained the 65 business day timeline, including the current language for when the 65-day timeline is triggered. To provide LEAs and parents with additional flexibility, VDOE recommended to the Board of Education that the 65 business day timeline be permitted to be extended if the eligibility committee requires additional data, which could not be obtained within the 65 business days, but without which an eligibility determination could not be made. The extension of the timeline is only permissible if both the parent and the LEA agree to the extension.
	1 AO 1 Att 19 Cit 23 Par 1 PTA	Oppose the use of the 65 business day timeline. Supports using the federal 60 calendar day timeline from date of consent. 65 business days is 4 additional weeks, during which a child who may need services may wait unnecessarily to receive them.	
	1 Par	Opposes the "65 business day" timeline for completion of reevaluation conducted for purposes other than the child's triennial. This timeline is excessive and interferes with timely provision of FAPE. The Virginia Regulations should specify the same 60 calendar day timeline as the Federal Regulations provide.	
	1 Par	Recommends that if an LEA can provide a compelling reason for needing longer than 60 calendar days to complete an evaluation, then a waiver of the timeline could be provided, rather than changing the entire timeline to 65 business days.	
	1 LEA	Supports using a timeline of 65 business days from date of consent for evaluation and eligibility determination.	
	1 Par	Supports the revision "of the receipt of the referral by the special education administrator or designee for the Evaluation."	
	1 Par	8 VAC 20-81-70, H.3 should be revised to read, ""The parent and eligibility group may agree in writing to extend the 60 calendar day timeline to obtain additional data that cannot be obtained within the 60 calendar days" for consistency with federal regulations on the timeline and to ensure that parents are aware of any delays and truly in agreement to extend.	
	2 AO 1 Cit 1 MD 6 Par	Support including the following language at the end of 60 B. 1. h.: " <u>The child shall receive early intervening services, based upon input from the parent and information gathered to date, for the interim of the extension period until the eligibility determination is made.</u> " Parents may feel pressured to agree to extensions. The intervening services would provide interventions during the delay period.	

Issue	Source	Comments	VDOE Response
	2 AO 1 Cit 1 MD 6 Par	Support inserting the following to the end of 70 H.3.: " <u>The child shall receive early intervening services, based upon input from the parent and information gathered to date, for the interim of the extension period until the eligibility determination is made.</u> " Parents may feel pressured to agree to extensions. The intervening services would provide interventions during the delay period.	
Evaluation/Reevaluation Procedures – General (except timeline, consent, or initial evaluation procedures) 8 VAC 20-81-70 (43 comments)	2 AO 1 Cit 1 MD 6 Par	Support revising B. 4 as follows - This section is to determine needed data for an eval determination, not to make eligibility determinations: 4. Requirements if additional data are not needed: a. If the team...., determine that no additional data are needed...., the local educational agency shall provide the child's parent(s) with prior written notice, including information regarding: (1) the determination and the reasons for it; and (2) the right of the parent(s) to request an evaluation to determine whether the child continues to be a child with a disability and to determine the child's educational needs. b. The [LEA] is not required to conduct the evaluation assessment to gather additional information..., unless the child's parent(s) requests the assessment for these specific purposes. c. The child's parent(s) has the right to resolve a dispute through mediation or due process as described in this chapter. Subsection 4.c. is not included with this portion of 300.305(d). "Assessment" is used in lieu of "evaluation" in 300.305(d). Subsection "4.d." should be subsection "5" to reflect the eval process included in 1 through 4.	<p>It is the responsibility of the IEP team to determine whether new assessments are needed for a reevaluation. For some students, especially those with more severe cognitive disabilities, parents may not wish to have their children reevaluated formally. The IEP team should have the flexibility to decide whether a reevaluation would be useful. Consistent with federal requirements, if it is determined that no evaluation data is needed for a reevaluation, prior written notice must be provided and parents must be informed of the right to use dispute resolution options as provided in IDEA if they disagree. This decision is documented at this meeting.</p> <p>It is a requirement that the reports be available to parents at least two days prior to the meeting at which eligibility will be discussed. It is reasonable that a LEA may need additional time after a meeting to make modification to reports to ensure that corrections or clarifications can be made before providing copies to a parent.</p> <p>The summary required for graduating students is included at 8 VAC 20-81-90 F.</p> <p>The purpose of the evaluation process is to determine eligibility for special education and related services which includes educational needs. The proposed language, however, does include language pertaining to students' present level of performance and educational needs. Evaluations provide information useful in developing the Present Level of Performance for an IEP if the child is or continues to be eligible for services. Present Level of Performance, however, also includes classroom information and other observations that may not be a part of the evaluations conducted for eligibility purposes. To require additional information, including specific scores, would be inappropriate since evaluators should use their professional expertise to decide specific information to be included.</p>
	2 AO 1 Cit 1 MD 6 Par	Support revising D as follows: "D. A written copy of the evaluation report shall be provided at no cost to the parent(s)....1. A written copy of the evaluation report(s) shall be provided to the parent(s) prior to or at the meeting... or immediately following the meeting, but no later than 10 days after the meeting. " Parents should be provided the opportunity to review data before the eligibility meeting, or at a minimum, the report should be available at the meeting, and not provided after it.	
	2 AO 1 Cit 1 MD 6 Par	Support deleting D.2, as redundant: "D. A written copy of the evaluation report shall be provided at no cost to the parent(s).... 2. The evaluation report(s) shall be provided to the parent(s) at no cost. "	
	2 AO 1 Cit 1 MD 6 Par	Support inserting the following at the end of I.: " <u>The public agency must also provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.</u> " 34 CFR 300.305(e)(3) should be included along with 34 CFR 300.305(e)(2) to help ensure the provisions of 34 CFR 300.305(e) are met.	
	1 Par	Supports requiring that the written copy of the evaluation report include all composite and subtest scores and all standardized scoring (standard, percentile, and raw) obtained or reasonably extrapolated from the assessment to ensure that	

Issue	Source	Comments	VDOE Response
		IEP teams have full information related to the child's performance and to ensure that a clear and complete record of the child's performance is maintained.	
	1 Par	Supports requiring that the written copy of the evaluation report(s) include not only a statement of the child's functioning on evaluations and services recommendations, but also recommendations of strategies, methodologies, accommodations, or other supports that would address the child's needs. This would allow IEP teams to make more appropriate and timely determinations of not only eligibility, but also how to best meet the child's educational and/ or related services needs.	
	1 Par	Supports requiring that an "Agreement" between the parent and local educational agency not to conduct evaluation at least once every three years should at a minimum be documented to ensure that such agreement did in fact occur.	
Eligibility Criteria – General 8 VAC 20-81-80 (59 comments)	1 Par	Opposes the new eligibility criteria which are restrictive and arbitrary, denying children with disabilities access to appropriate services.	To ensure greater consistency in the identification of students with disabilities among LEAs, eligibility criteria were included. VDOE declines to recommend additional changes to the criteria.
1 AO 1 Att 20 Cit 1 LAC 1 LEA 22 Par 1 PTA	Oppose including any eligibility criteria in the regulations that exceed those specifically defined in the federal regulations since this could work to the disadvantage of children by excluding children who may be eligible under the federal definitions. This will take away the flexibility of local school divisions. For example, the proposed criteria for autism may exclude children from the broader autism spectrum who do not fit the narrow diagnostic criteria.		
1 Par	Opposes the eligibility criteria in their entirety, except federally required SLD language. The proposed criteria would lower the floor of Virginia's Regulations below that of the Federal Regulations and artificially limit educators in determining "adverse effect." Children with disabilities may display a variety of characteristics and individual variations of these characteristics that may not fit neatly into prescribed criteria, and therefore, LEAs need flexibility in addressing these students. There is significant potential for these new criteria to eliminate the federal entitlements to special education services of some children. State law provisions that so restrict entitlements established by federal statutes are void under the Supremacy Clause of the Constitution. The content of these regulations would be best if issued as non-binding guidance document and could be updated based on current research and best practices.		
2 AO 1 Cit 1 MD 6 Par	Support deleting proposed subsections J-S, and U-W, which outline specific eligibility criteria, or in the alternative, revise subsections J-W as follows: <u>"Eligibility for a child with (specify disability) - The group may determine that a child as (specify disability) if a. the definition of (name disability) is met in accordance with 8 VAC 20-81-10; and b. there is an adverse effect on the child's educational performance due to one or more documented characteristics of the (name disability)."</u> The additional criteria places focus on the disability for the		

Issue	Source	Comments	VDOE Response
		child's educational needs, and will delay the process of identification by requiring unnecessary evaluations. At most these provisions should be in a TA document, not regulations.	
Eligibility -- General Procedures (except group composition) 8 VAC 20-81-80 A.- I., T (13 comments)	2 AO 1 Cit 1 MD 6 Par	Support the following revision: "H. For all children suspected of having a disability, local education agencies shall: 1. <u>use the applicable criteria adopted by the Virginia Department of Education as outlined in this section, for federal definitions of disability category</u> for determining whether a child has a disability; and 2. <u>have documented evidence that by reason of the disability, as documented through appropriate evaluations and assessments as required under 8 VAC 80-70</u> the child needs special education and related services."	To ensure greater consistency in the identification of students with disabilities among LEAs, eligibility criteria were included. VDOE declines to recommend additional changes to the criteria. The use of school division, in this context, refers to the decision that a child is not eligible for special education by the required team. This does not mean that the school division substitutes its judgment. Professionals who evaluate students must meet the qualifications included in licensure requirements for the Department of Education. Technical assistance from VDOE is always available to localities.
	1 Par	Opposes the language in 8 VAC 20-81-80 X. 2. which permits the LEA to substitute its judgment for that of the group including the parent of the child specified in the federal regulations. This provision is not consistent with the Federal Regulations at § 300.306.(a)(1). This section should be revised to conform to Federal requirements.	
	1 Par	Recommends that professionals making eligibility determinations be knowledgeable regarding the terminology and concepts which impact the child's ability to be successful, such as those associated with children with dyslexia, or autism.	
	1 Par	Suggests that eligibility procedural guidance is needed and that without it, schools will label children with the restricted definitions. Believes school personnel will be taking the role of medical professionals and will be practicing medicine without a license.	
Eligibility -- Group Composition 8 VAC 20-81-80 C. 2. (5 comments)	3 Sped Adm	Oppose the requirement that both a special education administrator and a special education teacher are required to participate in each Eligibility Committee meeting. Reasons: <ul style="list-style-type: none"> • It is overkill. • The group is already large and overwhelming to some parents. 	Although the regulations, as drafted, at 8 VAC 20-81-80 C. 2. b. indicate that the eligibility group shall include the "special education administrator or designee," and "a special education teacher," the language does not preclude the special education teacher from fulfilling both the role of the "special education teacher" and the "special education administrator's designee." Similar to an IEP team, the draft regulations require that each eligibility committee meeting include both a general education and a special education teacher. This change was included in the initial draft of the regulations and has been retained, in part, to ensure that eligibility is not predetermined. Specifically, the federal regulations, at 34 CFR § 300.308, require that if a child is determined to be a child with a specific learning disability, the determination must be made by a team that includes a regular education teacher. In addition to providing a valuable perspective, the inclusion of a regular education teacher in all eligibility committee meetings ensures that if the group determines that the child is a child with a specific learning
	2 Sped Adm	Oppose the requirement that both a special education and a general education teacher are required to participate in each Eligibility Committee meeting. This may create a loss in instructional time.	

Issue	Source	Comments	VDOE Response
			disability, then the appropriate staff will already be part of the eligibility committee eligibility.
Response to Intervention 8 VAC 20-81-80 J. (2 comments)	1 LAC	Suggests that clarification is needed for Response to Intervention. If it is used to help to determine eligibility for LD, then it requires direction on tools to be used, how response will be determined, who is qualified to assess students' response, and what training is necessary for someone to be deemed qualified to assess Rtl.	VDOE has developed guidance and continues to provide training opportunities throughout the state on RTI. Technical assistance will continue to be available either through VDOE staff and/or through the T/TACs. Due to the extensive technical assistance activities planned and provided, VDOE does not believe additional language is necessary for these regulations. LEAs will need the flexibility to develop local procedures and strategies for ensuring appropriate research-based strategies are implemented prior to identifying children for special education services.
	1 LEA	Suggests that Rtl is already underway appropriately in school divisions and that additional clarification is not required in the regulations since school teams have the expertise to determine appropriate interventions and to assess how a student responded to it.	
Termination of Services (other than consent or summary of academic achievement/functional performance) 8 VAC 20-81-90 A. - D. (10 comments)	2 AO 1 Cit 1 MD 6 Par	Support inserting at the end of D. " <u>and obtain parental consent.</u> "	The requirement for parental consent was reinserted at 8 VAC 20-81-90 C.
Consent -- Partial or complete Termination of Services 8 VAC 20-81-90 B. 3. 8 VAC 20-81-170 E.2.f. (4 comments)	1 Sped Adm	Oppose retaining the requirement to obtain parental consent for the termination of services when a student is no longer eligible for special education and related services.	In its proposed regulations, the Board of Education proposed to continue to include most Virginia-specific consent requirements, but proposed the elimination of the consent requirement for partial or complete termination of services: <ul style="list-style-type: none"> • to ensure that special education and/or related services and the associated rights are provided to only those students whose evaluation data and progress reports continue to indicate eligibility, and • to ensure that IDEA funding is used appropriately to provide services to only those students who are determined eligible for special education and related services in accordance with IDEA. In response to public comments received during the previous public comment period, however, VDOE recommended, and the BOE retained the current requirement for parent consent prior to any partial or complete termination of special education or related services. This requirement has also been retained in the current draft.
	1 AO 1 Par 1 Sped Tch	Support retaining parental consent for full or partial termination of services. One commenter noted the parent may be the only person on the team who knows the child and who has sufficient knowledge regarding the impact of the services on the child's success.	
Summary of Academic Achievement and Functional Performance	2 AO 1 Cit 1 MD	Support amending F.2. 1st sentence as follows: "If a child exits school without graduating with a standard or advanced studies high school diploma or reaching the age of 22, ... the [LEA] shall offer to may provide the child, or parent(s) of the	The language included is consistent with federal requirements. The insertion of the suggested language is not recommended by VDOE since the information would be provided to the adult

Issue	Source	Comments	VDOE Response
8 VAC 20-81-90 F. (10 comments)	6 Par	child, with a summary of academic achievement and functional performance when the child exits school. However, if the child resumes receipt of educational services...."	student.
FAPE – General 8 VAC 20-81-100 A. 2., B. - D., K., M (21 comments)	1 Par	Supports the addition of language clarifying equitable transportation for children with disabilities; this clarification has been needed. However, supports inserting "5. the need for transportation services shall not be used to arbitrarily shorten the length of the school day for children with disabilities" to address concerns that arise to orchestrate bus patterns, facilitate loading, and other matters. This will enhance LEA awareness and understanding of the need to ensure that students with disabilities may not be put in the position of trading valuable instructional time to receive this related service.	<p>Interpretation of federal and state regulations already requires that the educational day of the student with an IEP must be consistent with the length of day of general education unless a student's IEP requires a shortened day. The suggested added language is not necessary.</p> <p>Only those children who are between the ages of 2 and 21, inclusive, are eligible to be considered as students with disabilities. The reference to children from 2 – 5 is for preschool services, and not for the DD category. Consistent with the Board of Education's decision, DD will include children from 2 – 6 inclusive.</p> <p>The suggested language pertaining to a "full educational opportunity goal" is included.</p>
	2 AO 1 Cit 1 MD 6 Par	Oppose the inclusion of the stricken language as it prevents children over 5 from receiving services in the DD category: "A [FAPE] shall be available to all children with disabilities who need special education and related services, aged two to 21, inclusive, who meet the definition of "age of eligibility" as outlined in 8VAC20-81-40 and who reside within the jurisdiction of each local educational agency."	
	2 AO 1 Cit 1 MD 6 Par	Support retaining in A. 1. the following current language to ensure that LEAs remain engaged, responsible, and accountable: " <u>Each local educational agency shall establish a goal of providing a full educational opportunity for all children with disabilities from birth to 21, inclusive, residing within its jurisdiction by 2015.</u> "	
Extended School Year 8 VAC 20-81-100 J. (1 comment)	1 Sped Tch	Supports retaining proposed language that notes that ESY is not for summer only.	To provide clarity regarding this issue, a new provision was included in the proposed regulations, as issued for public comment in April 2008, which specifically stated that LEAs may not limit the provision of ESY to only the summer. This language has been retained in the current draft.
IEP – General 8 VAC 20-81-110 A.-B. I. (13 comments)	1 Par	Opposes the proposed provision that allows an LEA to refuse a parent's request for an IEP meeting if they consider such a request unreasonable.	<p>IEP meetings require a great deal of resources and are not intended to be a substitute for regular parent—teacher meetings or meetings to address concerns outside the context of the IEP. The provision allowing LEAs to refuse a parent's request for an IEP meeting if they consider such a request unreasonable is consistent with federal regulations.</p> <p>VDOE does not recommend inserting a timeline for the provision of special education and related services since a LEA may need to secure services via an outside contract or through interagency collaboration which may exceed such timelines. It is expected that a LEA will implement the IEP as soon as possible and will not delay without adequate justification.</p>
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support inserting the following language to better align with LRE requirements, and to ensure that services are not delayed: "Each local educational agency shall ensure that an IEP: d. Is implemented as soon as possible following parental consent to the IEP, <u>not to exceed 10 calendar days.</u> "	
	1 Par	Oppose the use of "As soon as possible" for the implementation of the child's IEP. It is not measurable or enforceable. Supports the use of a 14 calendar day time period – especially with retention of language requiring documentation of reasons for any delay beyond such and adding " <u>how the child's needs will be</u>	

Issue	Source	Comments	VDOE Response
		addressed during any additional delay." This would provide LEAs with some flexibility while not posing an undue delay in implementation of needed services.	
Timeline – IEP Development 8 VAC 20-81-110 B.2.b. & c. (1 comment)	1 Par	Opposes the proposed 30 day timeline for IEP development following eligibility determination. Once a determination that the child is eligible has been made, IEP development should be prompt. This regulation should be tightened to specify that an IEP is developed within 15 calendar days of eligibility determination.	Allowing 30 days ensures that appropriate personnel can be involved and that a team may need more than one meeting in order to complete the IEP. VDOE does not recommend shortening the timeline in order to ensure that the LEA has the time to develop a thoughtful and appropriate IEP for each student.
IEP -- Accountability for achieving IEP goals 8 VAC 20-81-110 B.7. (60 comments)	1 AO 1 Att 20 Cit 26 Par 1 PTA	Oppose elimination of language that requires an LEA to make a good faith effort to achieve annual goals, including benchmarks or objectives. Rationales: <ul style="list-style-type: none"> Without this provision of accountability, then the IEP is meaningless as a measure of success in providing a child FAPE. Without this, why bother to construct IEPs when schools already ignore IEP goals. LEAs should actively work toward achieving the growth projected in a child's annual IEP goals. Retaining the current language from 8 VAC20-81-110 B., strengthens LEA commitment to assisting children in achieving goals, by holding them accountable if they do not. Retaining this language further strengthens the perception that Virginia is serious about implementing and enforcing these regulations. 	In the discussion section of the federal regulations, USDOE noted in a response to a similar comment that "accountability for a child achieving his or her goals (is) unnecessary because other Federal laws, such as Title I of the ESEA, already provide sufficient motivation for agency effort to assist children with disabilities in making academic progress." VDOE concurs with this position. However, in response to public comments received during the previous public comment period, VDOE recommended the deletion of this provision, and the BOE concurred during its September 25, 2008 meeting. The current draft of the regulations does not include this provision.
2 AO 1 Cit 1 MD 1 PO 6 Par	Support retaining proposed B. 7. with the following changes to ensure collaboration: " This chapter does not requires that any the local educational agency, teacher, or other person to be held accountable if a child does not achieve the growth projected in the annual goals, including benchmarks or objectives. However, LEAs have an obligation to provide the child with FAPE. If the child is not meeting his or her expected progress by the middle marking period, the IEP team shall be given IEP meeting notice in accordance with the requirements of 8 VAC 20-81-170 A.1.b to address the lack of progress. The Virginia Department of Education (VDOE) and local educational agencies are not prohibited from establishing their own accountability systems regarding teacher, school, or agency performance."		
IEP – Amendment without meeting 8 VAC 20-81-110 B.9. (14 comments)	1 AO	Supports deleting the phrase "upon request" in 8 VAC 20-81-110 B. 9. b., to ensure that the requirement to provide the parent a revised copy of a child's IEP with amendments is not dependent on the parent's request.	VDOE does not believe that additional guidance or regulatory language is required. The drafted language mirrors the federal regulatory requirement, as outlined in 34 CFR § 300.324(a)(6).
2 AO 1 Cit 1 MD 1 PO 6 Par	Support modifying B.9.b. as follows to ensure parents are aware of the changes to their child's IEP: "b. Upon request, a The parent(s) shall be provided with a revised copy of the IEP with the amendments incorporated. <u>Implementation requirements of subdivision B.2 and timeline requirements subdivision E.8 also apply.</u> "		

Issue	Source	Comments	VDOE Response
	1 Par	Opposes requiring parents to “request” a copy of the IEP following agreement to make changes without convening an IEP meeting, and supports the inclusion of the following language: A revised IEP should be provided to the parent for their consent <u>“as soon as possible but no more than 2 calendar days after the LEA and parent agree to revise an IEP to reflect changes made without convening an IEP meeting.”</u> This section should also reference PWN requirements. Parents should be given an updated copy of the IEP at any time it is revised because implementation of a revised IEP is contingent upon informed parental consent. Parents cannot give informed parental consent to an IEP they have not seen as the contents may not be what parents anticipate based on communications with the LEA. Moreover, parents as well as the LEA should have a copy of the child’s current IEP after any change without having to make a request for it to ensure that they can consult and review the document as needed.	
	1 Par	Supports the attempted clarification that “This meeting is not a substitute for the required annual IEP meeting.” However, parents and LEA may come to an agreement on a change to the IEP via email, telephone, or other means that do not require or constitute a “meeting.” The regulation would be less confusing if language other than “this meeting” [for example, “such an agreement”] were used.	
IEP -- Team Composition (except excusal of members) 8 VAC 20-81-110 C. (12 comments)	2 AO 1 Cit 1 MD 1 PO 6 Par	Support the deletion of C. 2. "The local educational agency determines the school personnel to fill the roles of the required IEP team members in subdivisions 1 b through 1 e of this subsection." Guidance from USED applies to excusals not which IEP team members attend the meeting. C.2.would restrict what is allowable IEP team discussion by limiting participation of personnel.	VDOE does not believe that additional guidance or regulatory language is required. The drafted language mirrors the IDEA statutory requirement, at 20 USC 1414(d)(1)(D), and the federal regulatory requirement, as outlined in 34 CFR § 300.321(f), as well as the USDOE guidance, at Fed. Reg. 2006, pp. 46674-46675.
	1 AO	Supports deleting the phrase "at the parent's(s)' request" from 8 VAC 20-81-110 C. 4., to ensure that the requirement to invite the Part C service coordinator or other representative of the Part C system is not dependent on the parent's request.	
IEP – Excusal of Team Members 8 VAC 20-81-110 D. (11 comments)	2 AO 1 Cit 1 MD 1 PO 6 Par	Support amending D. 2. b. as follows: " b. the member submits, in writing, to the parent and the IEP team input into the development of the IEP prior to the meeting. the excused member submits in writing to all IEP team members, sufficient information to aid in the development of the IEP prior to the day of the meeting. The information shall be forwarded to the parent(s) at the same time as the other IEP team members. " This will facilitate informed parent participation, and provide the opportunity for the team to ask questions from the excused member in advance.	VDOE does not believe the suggested language is necessary.
IEP – Parent Participation in Meeting (except recording of meetings) –	1 AO	Suggests defining "early enough" in 8 VAC 20-81-110 E. 1. a. as "two weeks notice". Requiring LEAs to "notify the parent 'early enough' to ensure that they will have an opportunity to attend" is too vague.	VDOE does not believe that additional clarification is required. The drafted provisions are consistent with the federal regulations, while providing LEAs and parents flexibility

Issue	Source	Comments	VDOE Response
<p>includes notice of meetings</p> <p>8 VAC 20-81-110 D. – E.</p> <p>(24 comments)</p>	<p>2 AO 1 Cit 1 MD 1 PO 6 Par</p>	<p>Support revising E. 2. b. (2) (c), as follows: "(c) Identify any other agency <u>whom the local educational agency that will be invited to send a representative. (d) Identify any other agency whom the parent(s) will invite to send a representative.</u>" Often there is confusion as to who will invite which outside agency, the parent or the school. This can lead to no representation by an outside agency. Documenting who will invite each outside agency on the notice will avoid this potential confusion and missed opportunities during transition meetings.</p>	<p>regarding scheduling meetings. For example, given the unique needs of a child, a parent and LEA staff may agree to meet in a time period that is shorter than two weeks.</p> <p>VDOE does not believe that additional language is necessary specifying who will be responsible for inviting representatives from other agencies. Current language provides the flexibility for schools and parents to collaborate, and regulations more specific would hold schools accountable for participation by other agency representatives that the local schools do not supervise and cannot hold accountable for attending.</p> <p>VDOE does not believe that additional requirements regarding copies of draft IEPs are necessary.</p>
	<p>2 AO 1 Cit 1 MD 1 PO 6 Par</p>	<p>Support amending E. 8. as follows to ensure that there is not a delay in providing the parent with a copy of the IEP: "8. The local educational agency shall give the parent(s) a copy of the child's IEP at no cost to the parent(s) at the IEP meeting, but no later than 10 calendar days from the date of the IEP meeting. <u>If the local educational agency is working from a draft, a copy of the draft shall be provided to the parent at the same time the information is made available to school personnel so the parent can follow along and mark up the copy during the IEP meeting if desired.</u>"</p>	
	<p>1 Par</p>	<p>Opposes the 10 calendar day delay in giving parents a copy of the IEP, and supports providing a copy of the IEP with PWN for parental consent not more than 5 calendar days following the meeting or immediately following the meeting when the IEP is completed and available from a computerized program. Ten calendar days from the date of the IEP meeting is excessive and interferes with provision of FAPE when changes to the IEP are made.</p>	
<p>IEP – Development, Review, and Revision</p> <p>8 VAC 20-81-110 F.</p> <p>(11 comments)</p>	<p>2 AO 1 Cit 1 MD 1 PO 6 Par</p>	<p>Support revising F. 5. to be flexible, rather than restrictive: "5. Nothing in this section shall be construed to require prohibit: a. the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP; or b. that additional information be included in the child's IEP beyond what is explicitly required in this chapter." This change is in line with federal guidance for 300.320(d) and if additional information in the IEP makes the IEP easier to follow, that would help ensure FAPE for the child, and should be included.</p>	<p>VDOE does not recommend the change and believes that the use of the word, "require" provides the flexibility needed to IEP teams.</p>
<p>IEP Content - General</p> <p>8 VAC 20-81-110 G.</p> <p>(1 comment)</p>	<p>1 Par</p>	<p>Supports including non-verbal written testing as an option in IEPs, especially if the results yield higher test scores and would reflect favorably on students.</p>	<p>The regulations, as drafted, currently permit the inclusion of evaluation data in a student's IEP, when determined appropriate, by the student's IEP team.</p> <p>Based on guidance from USDOE, it has been the position of VDOE that a LEA can deny a parent's request for an IEP meeting if the LEA considers it unreasonable. A provision to this effect was included in the proposed regulations to clarify this position for all parties. However, in response to public comment received during the previous public comment period, VDOE removed the provision from the draft regulations submitted and approved by the BOE on September 25, 2008. The provision has not been reinserted in the current draft, but VDOE will</p>

Issue	Source	Comments	VDOE Response
			provide school administrators and consumers with VDOE's position on this issue when relevant questions arise.
IEP Content - Short-Term Objectives 8 VAC 20-81-110 G. 3. (14 comments)	1 Par	Supports the guarantee of short-term objectives or benchmarks in each child's IEP.	The inclusion of short-term objectives for all students is not necessary and as Congress identified, would impose unwarranted paperwork and burdens on LEAs. With local accountability for students with disabilities to participate in the general education curriculum and perform successfully on standardized tests alongside peers without disabilities, the BOE proposed retaining short-term objectives for only those students participating in an alternate assessment. However, in response to public comments received during previous public comment periods, the current draft includes language which requires each IEP team to document its consideration of short-term objectives during the development of the child's IEP, and which provides IEP teams with the flexibility to include short-term objectives, if necessary for FAPE.
1 Par	Suggests clarifying that IEP teams must consider including short-term objectives for all students. Unless consideration is included on the IEP meeting agenda checklist, these tools will go unused.		
1 Par	Supports inclusion of "Consider the child's needs for benchmarks or short-term objectives."		
2 AO 1 Cit 1 MD 1 PO 6 Par	Support retaining the current 2002 regulation regarding the inclusion of short-term objectives: "A statement of measurable annual goals, including <u>benchmarks or short-term objectives</u> , and academic and functional goals..." Measurable terms and relevant performance information are the cornerstone for effectively building, applying, and monitoring IEPs. Short term objectives provide a more real-time indicator of progress.		
IEP - Progress Reports 8 VAC 20-81-110 G. 8. (3 comments)	1 Par	Opposes the elimination of the requirement that progress reports be provided at least as often to students with disabilities as they are to students without disabilities. Home-school communication enhances student success. There is no justification for providing progress reports less often.	The provisions, as drafted, are consistent with federal regulations requiring that each student's IEP include a description of how a child's progress toward meeting annual goals will be measured and when periodic progress reports will be provided. In response to public comments received during previous public comment periods, VDOE recommended, and the BOE concurred during its September 25, 2008 meeting, that the current regulatory language be retained in order to clarify that IEP progress reports must be provided at the same intervals as provided to non-disabled peers. That revised language continues to be included in the current draft.
1 Par	Supports reinserting in 8 VAC 20-81-110 G. 8. the phrase "and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year" in addition to the phrase "at least as often as parents are informed of the progress of their children without disabilities".		
1 Par	Supports expanding 8 VAC 20-81-110 G. 8. to clarify that "extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year" requires more specificity than "making progress," "some progress," etc. Since goals are inherently measurable, measurements should be being taken periodically and should be reflected in progress reporting; for example, if a child is expected to be able to perform a task 9 of 10 trials to achieve mastery of a goal, the progress report should reflect the child's performance level throughout the year. IEP teams cannot make data driven decisions without these numbers and details at hand.		
IEP Content – Secondary Transition (except transition age)	2 AO 1 Cit 1 MD 1 PO	Recommend including in G.10.a. (2) language from the IDEA regulations Preamble which clarifies that IDEA funds may be used for a student to participate in a transitional program on a college campus, if the student's IEP team includes such services on the IEP. Many LEAs and parents are not aware that the IEP	VDOE does not believe this language is required to be included in the regulations. There are many ways that localities may use their funding consistent with IEP teams' decisions. It would not be appropriate or feasible to list every item that may be funded

Issue	Source	Comments	VDOE Response
<p>8 VAC 20-81-110 G. 10 & H. (12 comments)</p>	6 Par	team may place a student who is still eligible for IDEA services in a transition program on a college or university campus and that Part B funding could be used.	<p>with federal funding in the regulations.</p> <p>The language related to transition services in an IEP is consistent with federal requirements. Transition needs vary greatly from student to student and a list could be misinterpreted to apply to all students. VDOE continues to provide technical assistance to localities in this area.</p>
	1 Par	<p>Supports that the language of the current Regulations be preserved at 8 VAC 20-81-110. G 10 c: <u>“and shall include related services, community experiences, the development of employment and other post-school adult living objectives; and if appropriate, the acquisition of daily living skills and functional vocational evaluation.”</u> It is important that the IEP team including parents keep the basis of the child’s transition needs in sight as they plan for the child. Including a listing of these needs encourages IEP teams to thoughtfully consider transition planning and ensure that all needs are addressed.</p>	
<p>Consent – Transfer Students 8 VAC 20-81-120 A.2. (68 comments)</p>	<p>1 AO 1 Att 19 Cit 1 LAC 20 Par 1 PTA</p> <p>43</p>	<p>Oppose elimination of parent consent prior to providing sped services to transfer students when there is a disagreement on the provision of services. Parents would have no ability to require an LEA to reach consensus on services upon transfer, permitting an LEA to implement an IEP that does not offer comparable services to the student’s previous LEA.</p>	<p>The drafted provisions are consistent with federal regulations and require that comparable services be provided in consultation with the parents until a new or interim IEP is developed. This provision ensures that FAPE is provided without delay upon transfer.</p> <p>Based on public comments, the Board of Education decided to retain all current parental consent requirements for the development of a new or interim IEP.</p>
	1 Par	<p>Opposes the elimination of parental consent for transfer students prior to providing special education services. The use of "consultation" is contrary to the IEP team approach and this would negatively impact children with disabilities.</p>	
	<p>2 AO 1 Cit 1 MD 6 Par 1 PO</p>	<p>Support retaining the 2002 regulations by amending proposed A.2. as follows: "2. The new local educational agency shall provide a free appropriate public education to the child, including ensuring that the child has available special education and related services, in consultation with the parent(s), <u>by implementing</u> the child’s IEP from the previous local educational agency, until the new local educational agency either: a. Adopts [and implements] the child’s IEP from the previous local educational agency with the parent’s consent; or...." Current regulations allow for FAPE provision by immediate implementation of the child’s current IEP until a new one can be developed, preventing a gap in service provision.</p>	
	1 Cit	<p>Opposes the elimination of the current requirement for parental consent prior to providing special education services to transfer students when there is a disagreement on the provision of services. The proposed regulations would require only a “consultation” with the parent. Such a proposal could permit an LEA to implement an IEP that does not offer comparable services to the student’s previous school district. Parents would have no ability to require an LEA to come to consensus on the delivery of services upon transfer, as is otherwise required in the development and amendment of existing IEPs.</p>	

Issue	Source	Comments	VDOE Response
	2 AO 1 Cit 1 MD 6 Par 1 PO	Support amending A. 4., as follows: "4. If the parent(s) and the local educational agency are unable to agree on interim services or a new IEP, <u>the LEA shall implement the child's IEP from the previous local education agency.</u> ...During the resolution of the dispute, the local educational agency shall provide FAPE in consultations with the parent(s), including services comparable to those described in the child's IEP from the previous local educational agency. <u>by the implementation of the child's IEP from the previous local educational agency.</u> " Retaining parental consent for IEP development and implementation for transfer students allows parents full participation in the IEP process, and allows the student the right of stay put during a dispute situation. By adopting the child's transfer IEP, the new school district is not left to guess as to FAPE., thus less potential for litigation.	
	1 LEA	Supports the current proposal to allow the LEA to provide comparable services to transfer students without parental consent.	
Least Restrictive Environment 8 VAC 20-81-130 (11 comments)	2 AO 1 Cit 1 MD 1 PO 6 Par	Support including a new 1. c., which will include the alternative methods for LRE for preschool children discussed in the federal regulations to ensure children are afforded appropriate educational opportunities. "c. <u>Must explore alternative methods to ensure that the requirements of this section are met for preschool children. Examples of such alternative methods might include placement options in private preschool programs or other community-based settings. Paying for the placement of qualified preschool children with disabilities in a private preschool with children without disabilities is one, but not the only, option available to public agencies to meet the requirements of this section. Local school divisions that do not operate programs for preschool children without disabilities are not required to initiate those programs solely to satisfy these requirements. Local school divisions that do not have an inclusive public preschool but can provide all the appropriate services and supports must explore alternative methods.</u> "	VDOE does not believe the additional language is necessary. VDOE, however, does provide technical assistance and guidance consistent with federal guidance to localities regarding LRE for the preschool population.
Private Schools – Parentally Placed Private School Students 8 VAC 20-81-150 C.; 8 VAC 20-81-170 E. 4. c. (10 comments)	2 AO 1 Cit 1 MD 6 Par	Support amending C.1.a.(1) to include private preschools that do not qualify as elementary schools: "a. The term "private school" includes:...(1) Private, denominational, or parochial schools ... <u>(a) Private, denominational, or parochial preschools that do not qualify as elementary schools</u> " Currently, IDEA regulations require LEAs have the responsibility to spend a proportionate amount to provide services to children with disabilities who have been parentally-placed in private elementary schools and secondary schools. Since most private preschools are not in elementary schools, such students would not qualify for services under the IDEA provisions for "parentally-placed private school children."	VDOE does not believe this is necessary since the requirements for a LEA to provide a private placement are for all students who are found eligible for special education. Likewise, students whose parents place them in private schools include students from 2 – 21, inclusive. The LEA is responsible for determining whether the private school meets the definition of elementary school. (See Superintendent's Memo, Interpretive, No. 1, Feb. 9, 2007)
Discipline – General 8 VAC 20-81-160 A., I., J. (16 comments)	1 LAC 1 Par	Suggest that the regulations clarify that if a student is returned to school after a disciplinary removal, the student should be returned to the original school, and not only the same level of services. One commenter noted that parental participation in the decision should not be denied when a child's actions are not a manifestation of the child's disability.	VDOE does not believe that additional guidance or regulatory language is required. The proposed regulations are consistent with the federal regulations and provide protections for students with disabilities while providing LEAs with the necessary flexibility to ensure the safety of students and staff and to appropriately discipline a student who has violated the Student

Issue	Source	Comments	VDOE Response
	1 LEA	Suggests that the regulations not include language that would result in requiring localities to return children to the original school since schools need to have the flexibility of moving a student to another school in certain circumstances.	Code of Conduct.
	1 Par	We support the addition of language clarifying the actions to be taken by the IEP team including parent "in the event that the child's behavior impedes the child's learning or that of others."	
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support clarifying that case-by-case basis consideration to remove a child must be exercised consistently with the requirements in 8 VAC 20-80-160 and 34 CFR §300.530, and may not be used to circumvent these protections.	
	1 Par	Supports the addition of language clarifying the actions personnel may take in considering "unique circumstances."	
Discipline - Short-term Removals (except services) 8 VAC 20-81-160 B.2. & C.6. (1 comment)	1 Par	Opposes short term removals for a "period of time of up to 10 consecutive school days or 10 cumulative school days in a school year" as a standard for all students with disabilities. LEAs use this provision to simply remove the child for the maximum time period allowed before addressing the child's behavioral needs. Other states have limited the number of short-term removals allowed before addressing the need for behavioral supports and/ or an FBA. Recommends Virginia specify a more limited number of short term removals for children whose disabilities are more likely to impact behaviorally such as children who have intellectual, communication, or emotional deficits before requiring that the IEP team meet to address those needs. For such children, a "period of time of up to 40 <u>3</u> consecutive school days or 40 <u>3</u> cumulative school days in a school year" should trigger the services and MDR requirements of 8 VAC 20-81-160.C and D.	Consistent with the federal regulations, the LEA determines whether the short-term removals constitute a pattern or a change in placement. VDOE does not recommend further restrictions or requirements.
Discipline - Long Term Removals & interim alternative education setting (IAES) placements (except services) 8 VAC 20-81-160 C. (34 comments)	2 AO 1 Cit 1 MD 1 PO 6 Par	Support amending C.2.b. to define "substantially similar" to include behaviors as those that were caused by the child's disability or had a direct and substantial relationship to it. Behaviors may appear different, but they may all be caused by the child's disability, and therefore, are "substantially similar."	The proposed provisions regarding when a pattern of behavior constitutes a long-term removal and the steps that a LEA must take are consistent with the federal regulations regarding this issue. VDOE does not recommend further requirements. The language at C.5. is consistent with federal requirements and is designed to protect the safety of other students since this relates to students with weapons, drugs, or who have inflicted serious bodily harm to another. VDOE does not agree that this needs to be amended.
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support amending C.3. to provide that if an LEA determines that a series of short-term removals is not a pattern, the LEA shall notify the parent(s) of the decision and provide the parent(s) with the procedural safeguards. Successive removals of several days disrupt the child's educational environment and cause the student to fall further behind, particularly if the child's disability impedes the ability to learn. Care should be taken to ensure that parents know their procedural safeguards and can challenge this decision.	

Issue	Source	Comments	VDOE Response
	1 Par	Opposes vesting authority to determine when isolated, short-term removals for unrelated instances of misconduct are considered a pattern with the LEA, which may be biased or otherwise motivated to find that there is not a pattern regardless of whether or not a pattern exists. Parents should be included in this decision making.	
	2 AO 1 Cit 1 MD 1 PO 6 Par	Suggest amending the proposed 20-81-160 C.5. to address "special circumstances" to provide that "school personnel may remove a child with a disability to an appropriate interim alternative educational setting for the same <u>no more than the</u> amount of time that a child without a disability would be subject to discipline. . . ." The team should be free to consider extenuating circumstances and reduce the removal period if appropriate.	
<p>Discipline -- Services During Removal (except FBA and BIP)</p> <p>8 VAC 20-81-160 B. 2. & C. 6.</p> <p>(90 comments)</p>	1 AO 1 Att 20 Cit 1 LAC 21 Par 1 PTA	<p>Oppose the elimination of the requirement for students who are short-term removed to receive services to enable the child to appropriately progress, not just participate, in the general education curriculum. Rationales:</p> <ul style="list-style-type: none"> • This will compound a student's disciplinary problems and school failure since services provided during long-term suspensions are already inadequate. • Depriving these students of needed services even short term does not facilitate behavioral improvements or educational progress. • Services provided for such students are already grossly inadequate, and the student's disciplinary problems are greatly compounded by the failure to meet the child's educational needs. The proposed regulatory change would eliminate all requirements on local school divisions to attempt to remedy this shortcoming. 	<p>VDOE does not believe that additional guidance or regulatory language is required. The proposed provisions are consistent with federal regulations and require that a child with a disability who is long-term removed:</p> <ul style="list-style-type: none"> • continue to receive educational services so as to enable the student to continue to participate in the general educational curriculum, although in another setting; • continue to receive those services and modifications including those described in the child's current IEP that will enable the child to progress toward meeting the IEP goals; and • receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
1 LEA	Supports the current proposed regulations that require a child to be provided services during removals that allow the child to participate in the general curriculum since that language mirrors federal and would not support exceeding the federal language.		
2 AO 1 Cit 1 MD 1 PO 6 Par	Support amending B.2.b. to require that the LEA provide "services to the extent determined necessary <u>to provide a free appropriate public education as required by IDEA 2004 § 612(a)(1)</u> to enable the student to continue to <u>participate appropriately progress</u> in the general education curriculum and to progress toward meeting the goals of the student's IEP." IDEA and its federal regulations make it illegal to deprive children with disabilities of FAPE, and do not contemplate "FAPE-light". Thus, the Virginia regulations must clarify that LEAs must provide FAPE.		
2 AO 1 Cit 1 MD	Support amending B.2.b. to require that a child who has been removed for 10 days and experiences a subsequent removal of less than 10 school days that is not a change in placement begin receiving educational services on the 11th		

Issue	Source	Comments	VDOE Response
	1 PO 6 Par	cumulative day of removal. This is required by the new federal regulations, 34 CFR § 300.530(d)(4). See 71 Fed. Reg. 46717.	
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support amending C.6.a.(1) to ensure that a students removed long-term "continue to receive educational services so as to <u>receive a free appropriate public education as required by IDEA 2004 § 612(a)(1) and to enable the student to continue to participate in the general educational curriculum, although in another setting...</u> " 300.530(d)(1) requires that a child who is removed to continue to receive educational services as provided in 34 CFR § 300.101(a), which requires FAPE, and to continue to participate in the general education curriculum and progress toward meeting IEP goals. IDEA 2004 does not contemplate the provision of FAPE-light, and to avoid confusion, the requirement should be included.	
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support amending C. 6. a. (2) so that children who are long-term removed "continue to receive those services and modifications including those described in the child's current IEP that will to enable the child to progress toward meeting the IEP goals . . ." It would be inappropriate to allow LEAs to pick and choose among the services based on what school personnel might believe are necessary to enable a child to make progress.	
Discipline -- Functional Behavioral Assessments (FBA) & Behavioral Intervention Plans (BIP) 8 VAC 20-81-160 C. 6. a. (3) 8 VAC 20-81-160 D. 6. (92 comments)	1 Par	Oppose denying parents the right to participate in the development of an FBA when their child's behavior is impeding their learning.	The proposed provisions related to the use of FBAs and BIPs are consistent with federal regulations, including the deletion of the previous requirement that a FBA be triggered by the 11 th cumulative day of disciplinary removal in a school year. VDOE believes that adequate protections are provided to students with disabilities while providing LEAs with the flexibility to develop FBAs and BIPs that are responsive to the child's unique needs. LEAs continue to be required to appropriately review and revise a child's IEP, if the child's behavior is impeding their learning or that of others. Parents remain a member of the IEP team, and therefore, may fully participate in the development of FBAs and BIPs.
1 AO 1 Cit 20 Cit 22 Par 1 PTA	Oppose the elimination of the requirement for the IEP team to convene to conduct a FBA and implement or modify a BIP for any child with a disability removed long-term (11 th day rule). Suggests IEP teams must be proactive to determine the causes of behavior and plan for prevention of behaviors. One commenter noted students with disabilities whose behavior warrants such removals need greater intervention from their IEP teams, not less.		
1 LEA	Suggests that a review of the data may be sufficient as an FBA and LEAs need to have this flexibility. Supports current proposal.		
2 AO 1 Cit 1 MD 1 PO 6 Par	Support requiring a FBA be performed for children who are given a subsequent short-term removal after being removed for 10 cumulative school days in the year. FBAs, by addressing the actual cause of the behavior, ensure that interventions are appropriate and effective, abating the behavior.		
2 AO 1 Cit 1 MD 1 PO 6 Par	Support retaining 2002 regulation 8 VAC 20-80-62 C. 2. (e) which requires that if a child with a BIP is removed for 10 school day and then subjected to a further short-term removal that is not a change in placement, then the BIP will be reviewed and modified if one or more IEP team members believe it necessary.		

Issue	Source	Comments	VDOE Response
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support amending C.6.a.3. to require an FBA and BIP be developed to address the conduct that resulted in the child's exclusion, or if the existing FBA/BIP are over one year old, the development of a new FBA/BIP. Also suggests that if the FBA is more than a year old, it cannot be a review of existing data. Outdated FBAs and BIPs often fail to effectively address a child's current behaviors, and a review of old data will not identify the significant, pupil-specific social, affective, cognitive, and/or environmental factors associated with the occurrence (and non-occurrence) of the behaviors.	
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support including the following language as a new D. 7. a. and b. to ensure a FBA and BIP are developed to address the conduct that led to the child's exclusion: " <u>a. conduct a functional behavior assessment, unless the local educational agency had conducted this assessment before the behavior that resulted in the change in placement occurred, and implement a behavioral intervention plan for the child; or b. If a behavioral intervention plan already has been developed, review this plan and modify it, as necessary, to address the behavior.</u> "	
	1 Par	Opposes the language of "as appropriate" in determining the need for an FBA. The determination of whether an FBA should be conducted should be the decision of an IEP team including parents convened for the purpose of conduction such an FBA and of developing or modifying a BIP to address the behavior or on parental request for an evaluation or reevaluation. The regulation should clarify these points. The regulation should be revised to read, "Receive, as appropriate if determined by the IEP team including parents and consented by parents or upon parent's request, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur."	
Discipline -- Manifestation Determination Review (MDR) - (except FBA and BIP) 8 VAC 20-81-160 D. (89 comments)	1 AO	Opposes any decrease in parental participation and parental consent in the manifestation determination meeting.	The proposed provisions are consistent with the federal special education regulations, and the VDOE believes the federal regulations provide sufficient parameters for the MDR decision, and that no additional clarification is necessary.
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support amending D. 2. to require LEAs to make bona fide efforts to work with parents in selecting IEP members for manifestation determination. Parents or LEAs must have the discretion to include all individuals with special knowledge or expertise regarding the child - particularly regarding how a student's disability can impact behavior and understanding consequences of behaviors. It is important that all persons with appropriate knowledge/expertise be on the team.	The regulations do not preclude the parent or another IEP team member from requesting an IEP meeting to consider manifestation determination for disciplinary actions related to short-term removals. VDOE will clarify provisions related to membership and roles through technical assistance guidance and documents. A recent Virginia federal court case does not give parent and LEA equal status in determining the relevant members; the LEA makes the determination. This information will be included in VDOE's technical assistance document on discipline.
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support the requirement in D.2. that manifestation determination IEP meetings convene "immediately, if possible" but not later than 10 school days after the decision to change the placement of the child. Recommends strengthening the language to require that if the IEP cannot meet as soon as possible then the LEA must document the specific facts that made it impossible.	

Issue	Source	Comments	VDOE Response
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support amending D.3 to specify that the review of all relevant information in the child's file includes all of the child's education records, as well as new information that parents or LEAs have. All relevant information should be considered. The term "child's file" should be defined to include all education records of the child, so the term is not interpreted so narrowly that relevant information is excluded.	
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support amending the proposed requirement D. 4. to state that "behavior has a direct and substantial relationship to the disability if the disability significantly impairs the child's behavioral control." Language was included in Conference Report 108-779 indicating this and came from Doe v Maher, 793 F.2d 1470 (9th Circuit 1986).	
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support amending D. 6. a and D. 6. b. to require an FBA and BIP be developed to address the conduct that resulted in the child's exclusion. If an existing FBA or BIP is over one year old, suggests a new one be developed and not be limited to reviewing existing data in the file.	
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support amending D. 6. a. to require that in reviewing and developing an FBA, the LEA consider and implement positive behavioral strategies.	
	2 AO 1 Cit 1 MD 1 PO 6 Par	Suggest that even if the child's behavior is not a manifestation of the child's disability, the IEP team should be required to review positive behavioral strategies and develop an appropriate BIP after an FBA.	
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support deleting the following sentence in D. 6. c. " The exception to this provision is when the child has been removed for not more than 45 school days to an interim alternative educational setting for matters described in subdivision C-5.a. of this section. In that case, school personnel may keep the student in the interim alternative educational setting until the expiration of the 45 day period. " Current state regulation does not allow for placement change to continue once a behavior has been identified as a manifestation of a disability. This proposed change would allow unilateral placement change even when behavior is clearly identified as a manifestation of a disability.	
Discipline – Expedited Due Process Hearing/Appeal 8 VAC 20-81-160 E.-G., 8 VAC 20-81-210 P.	2 AO 1 Cit 1 MD 1 PO 6 Par	Suggest that under F. 1. and F. 3., when an expedited hearing results in a 45 day interim alternative placement or an extension, an FBA and BIP be required to address the conduct that resulted in the child's exclusion and develop new ones if they are over a year old. Also suggests that if the FBA/BIP is over a year old, the new ones not be allowed to be just a review of data.	Nothing in the regulations would prevent a LEA from conducting a FBA/BIP when an expedited hearing results in a 45 day interim alternative placement. VDOE, however, does not agree that all students require a FBA and/or BIP and does not recommend adding this provision.

Issue	Source	Comments	VDOE Response
(22 comments)	2 AO 1 Cit 1 MD 1 PO 6 Par	Oppose the elimination of factors in current regulation, 8 VAC 20-80-68 C. 4. b. that require a hearing officer to consider in ordering a change in placement to an interim alternative educational setting for not more than 45 school days because current placement is substantially likely to result in injury to student and others, including the appropriateness of the student's current placement. This includes considering if the LEA made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services, and determine whether the interim alternative educational setting to which the child is long-term removed meets the services required during long-term removals. All of these factors remain an important part of the HO's decision, even if no longer contained in these federal regulations. IDEA 2004 did not prohibit HO from considering the factors or indicate that they are no longer part of the analysis. See <i>Light v. Parkway C-2 S.D. (8th Cir. 1994)</i> .	The requirements for this part mirror federal requirements and are intended to provide the flexibility to meet each child's unique needs while protecting the safety of other students.
Discipline – Protection for Students Not Yet Eligible 8 VAC 20-81-160 H. (22 comments)	2 AO 1 Cit 1 MD 1 PO 6 Par	Support retaining all factors regarding students not yet eligible outlined in the current 8 VAC 20-80-68 C. 8. b., including that the child's behavior or performance demonstrates the need for those services." Federal regulations deem an LEA knowledgeable about a child's disability for discipline purposes if the parent provides notice of his/her concerns that the child needs special education and related services. A child should not forego the protection of knowledge just because a parent cannot write nor has a disability preventing a written statement.	The language in the proposed regulations regarding when a LEA is deemed to have a "basis of knowledge" was specifically developed to comply with IDEA 2004, and the factors identified in the statute. USDOE, in response to a similar comment regarding the insertion of a timeline regarding when a child has previously been evaluated and determined ineligible, and whether or not the LEA has a "basis of knowledge," stated, "Many commenters recommended that an evaluation and eligibility determination that is more than three years old not prevent deeming a LEA to have a basis of knowledge...The intent of Congress in revising section 615(k)(5) of the Act was to 'ensure that schools can appropriately discipline students, while maintaining protections for students whom the school had valid reason to know had a disability' and that the provisions in the Act should not have the 'unintended consequence of providing a shield against the ability of a school district to be able to appropriately discipline a student.' (S. Rpt. No. 108–185, p. 46). We are not including time restrictions, as suggested by the commenters, to the exceptions in paragraph (c) of this section because we believe such restrictions are unnecessary and could have the unintended consequence of hindering the school's ability to appropriately discipline a child." (Federal Register, p. 46727) VDOE supports this position, and similarly, declines to insert the recommended language.
	2 AO 1 Cit 1 MD 1 PO 6 Par	Suggest clarifying H.3.(b), the provision indicating the LEA would not have knowledge if the child had previously been evaluated to say that "(b) the child has been evaluated <u>within the last 3 years</u> . . ." and determined ineligible for special education and related services.	
Educational Records 8 VAC 20-81-170 A.1.a. and G. (15 comments)	3 Sped Adm	Oppose the new provision in G. 11. b. which requires LEAs to ensure electronic communications regarding any matter associated with the child be part of the child's educational record. Rationales: <ul style="list-style-type: none"> • This will limit communications between parents and teachers. • It will make the child's educational records thick and difficult to manage. • The same requirement is not applicable to other communications between parents and teachers (ie. letters, notes). • It could be time consuming and reduce instructional time. 	As drafted, 8 VAC 20-81-170 G. 11. b. states, "Each local educational agency shall ensure that electronic communications via e-mails or facsimiles regarding any matter associated with the child, including matters related to IEP meetings, disciplinary actions, or service delivery, be part of the child's educational record." However, this provision only applies if the electronic communication otherwise meets the definition of an education record. "Education record" means, in part, "those records that

Issue	Source	Comments	VDOE Response
	<p>2 AO 1 Cit 1 MD 1 PO 6 Par</p>	<ul style="list-style-type: none"> The impact of the new requirement is unclear (ie. Should a summary of every conversation and the student's daily communication log be included? Would every communication among teachers/administrators in the building regarding the student need to be recorded?) <p>Recommend amending G. 1. a. to require that an LEA must comply with a request for educational records with 5 business days, versus 45 calendar delays. 45 calendar days is unnecessarily lengthy and parent request for records are usually time sensitive.</p> <p>Opposes the removal of parent access to records "2 days" prior to an IEP meeting and the "45 day" time period for making records available to parents. Revise the regulation to state, "The [LEA] comply with a request without unnecessary delay and <u>not more than two days</u> before any meeting regarding an IEP or any hearing in accordance with 8VAC20-81-160 and 8VAC20-81-210, or resolution session in accordance with 8VAC20-81-210, and in no case more than <u>5 business</u> days after the request has been made." "Before" is not a measurable standard and cannot be enforced due to variance in interpretation. Review of records can take considerable time and should not be subject to LEAs imposing capricious limitations on when parents may conduct their review. A child's records exist in his/her file. The LEA should be reasonably expected to pull the child's records on parent request. The sole need for delay would be to have a school representative available to monitor or assist the parent or parent's representative with copying of records. Such availability of personnel is accommodated by a 5 business day timeline.</p>	<p>are directly related to the student and maintained by an educational agency or institution or by a party acting for the agency or institution." Therefore, if the LEA would not otherwise maintain a specific electronic communication, they are not required to do so based solely on this regulatory requirement. However, if an electronic communication is directly related to a student <u>and</u> maintained by the LEA, then the electronic communication is considered part of the child's educational record.</p> <p>VDOE believes that the timelines, which comport with federal requirements, are sufficient to ensure the LEA's responsibilities in providing records to parents. Therefore, VDOE declines to make the timelines more restrictive.</p>
<p>Independent Educational Evaluation (IEE) 8 VAC 20-81-170 B. (11 comments)</p>	<p>2 AO 1 Cit 1 MD 1 PO 6 Par</p>	<p>Support deleting B. 2. e.: "e. A parent is entitled to only one independent educational evaluation at public expense each time the public educational agency conducts an evaluation component with which the parent disagrees." This exceeds federal regulations and could be interpreted as more restrictive. Suggests using the federal language.</p>	<p>An evaluation is a process by which it is determined whether a child has a disability and the nature and extent of the special education and related services that the child needs. Historically, in Virginia, there have been questions about the nature and frequency of the parent's entitlement for an IEE. Specifically, if multiple assessments were completed as part of the evaluation process (i.e., psychoeducational, sociological, speechlanguage), was the parent entitled to a separate IEE for each assessment (i.e., component) which was completed during the evaluation cycle, or was the parent required to select only one of the assessments for purposes of an IEE? The proposed regulations were intended to clarify that a parent is entitled to an IEE for <u>each</u> assessment that was completed during the evaluation process, with which the parent disagrees. In accordance with federal regulations, a LEA may not limit a parent's request for an IEE to one section of a specific assessment or evaluation component.</p>
<p>Prior Written Notice (PWN) 8 VAC 20-81-170 C.</p>	<p>1 Par</p>	<p>Opposes the proposed limitations on when LEAs need to provide PWN, as PWN is one way that parents can have their questions answered by reluctant schools.</p>	<p>VDOE does not believe that additional guidance or regulatory language is required. The 1999 federal regulations included a provision that specified that if the prior written notice related to</p>

Issue	Source	Comments	VDOE Response
(12 comments)	2 AO 1 Cit 1 MD 1 PO 6 Par	Support amending C. 1. to note that PWN shall be given to the parent within a reasonable time, "but in no case more than 24 hours before or after the local educational agency...." Providing a specific timeline will alleviate misunderstandings and prevent a delay in filing for Due Process, if necessary.	an action that also required parental consent, the LEA could provide notice at the time of requesting parental consent. This language was removed from the federal regulations and that change was mirrored in the draft Virginia regulations. Because parental consent cannot be requested without the provision of prior written notice, the result does not limit or eliminate the need to provide prior written notice when the LEA proposes or refuses an action that requires parental consent.
Procedural Safeguards Notice 8 VAC 20-81-170 D. (33 comments)	2 AO 1 Cit 1 MD 1 PO 6 Par	Support deleting the requirement that the Procedural Safeguards Document (PSD) only be provided one time a year except...."	The changes regarding the provision of the Procedural Safeguards Notice comply with statutory language outlined in IDEA 2004, and its federal implementing regulations, which was intended to balance a parent's need to understand their procedural protections, while reducing unnecessary paperwork and procedural burdens. Therefore, VDOE does not believe that additional changes are necessary.
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support revising the language in D. 1.e. "On the date on which the decision is made to make <u>take a disciplinary action, including a disciplinary removal that constitutes a change in placement because of a violation of a code of student conduct.</u> " rather than "to make a disciplinary removal."	
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support providing a copy of the PSD upon "review regarding reevaluation of the child" and upon "each notification of an IEP meeting."	
Consent – General 8 VAC 20-81-170 E (1 comment)	1 Par	Opposes any changes that would limit or omit the need for parental consent.	In response to the public comments on parent consent, the BOE retained the current parent consent requirements for new and revised IEPs and changes in eligibility including complete or partial termination of services.
Consent – FBA (42 comments)	1 AO	Opposes the elimination of participation and consent of parents in the FBA process.	Consistent with federal regulations, parents continue to be a vital member of the IEP team, and therefore, an important participant in the development and review of FBAs.
	1 AO 1 Att 19 Cit 19 Par 1 PTA	Oppose the development of an FBA without parental consent.	Consistent with federal regulations and guidance from USDOE, the proposed regulations continue to require parental consent for a functional behavioral assessment when the LEA proposes to obtain new evaluations.
Consent -- Revocation 8 VAC 20-81-170 E. 3.	2 Sped Adm	Support a revision of the parent revocation provisions to comply with the federal regulations that became effective December 2008.	The purpose of the current public comment period is to address those changes to the draft regulations, which occurred between the proposed and final stages of the regulations revision

Issue	Source	Comments	VDOE Response
(2 comments)			process, and which created a “substantial impact.” Since the federal regulatory change referenced by the commenter did not occur until after the BOE’s September 25, 2008 meeting, in which the “final regulations” were approved, this change is not permitted to be addressed as part of the current regulatory process. However, the necessary changes to Virginia’s special education process will be made through a separate process, as outlined in Virginia’s Administrative Process Act.
Age of Majority – Transfer of Rights 8 VAC 20-81-180 (10 comments)	2 AO 1 Cit 1 MD 6 Par	Support amending the timeline for certification that the adult student is incapable of providing informed consent, in C. 3. d., to include 60 calendar days, rather than 65 business days, to be consistent with previous recommendations regarding the timeline for eligibility determination.	The 65 business day timeline is one which has a long-standing history in Virginia. To shorten this timeline would not allow LEAs adequate time and would have major fiscal implications.
Mediation 8 VAC 20-81-190 (33 comments)	2 AO 1 Cit 1 MD 1 PO 6 Par	Suggest amending C. to add a final sentence stating, “ <u>Such a meeting cannot be used to delay or deny a due process hearing.</u> ” This language has not been previously included - since the meeting is a pre-meeting to explain the benefits of mediation, not the mediation itself.	VDOE does not believe the additional language is necessary since it would be redundant. No action taken to try to resolve a dispute can delay a due process hearing once it has been requested by the parent unless the parent agrees to delay the request.
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support amending E. 2. as follows: “E. The mediation process shall:…2. Conclude with a written legally binding agreement if an agreement is reached by the parties to the dispute that, … c)_s enforceable in any state or federal court of competent jurisdiction <u>and identifies procedures for incorporating relevant terms of the mediation agreement into the child’s IEP</u> ” The purpose of the Mediation will often include changes to services or placement which should be incorporated into the IEP where they exist.”	VDOE does not believe it is appropriate to require additional specificity for the mediation agreement. If a locality agrees to a change in services, it is the responsibility of the school division to either formalize the agreement via an IEP or develop an agreement to provide the service.
	2 AO 1 Cit 1 MD 1 PO 6 Par	Support the deletion of the 2nd sentence in E. 3. “Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality pledge prior to the commencement of the mediation process.” Although the Federal Register states that the intent is not to prevent States from allowing parties to sign a confidentiality pledge, it does not state that States can require it. The word “consent” has been added to this section and should be removed as parental consent is no longer required for mediation.	VDOE believes it is appropriate to require a confidentiality pledge as a measure of participation in good faith and to create a climate that participants can freely discuss the dispute without regard to information that may be used against them subsequent to the mediation.
Complaints Process 8 VAC 20-81-200 (10 comments)	2 AO 1 Cit 1 MD 6 Par	Support inserting into proposed section D.4.f. the current requirement that “The local educational agency will be given 15 business days from the date of notice of noncompliance to respond and initiate corrective action.”	VDOE doe not believe that additional language or timelines related to the complaints process is required.
Due Process -- Hearing Officers	2 AO 1 Cit	Support deleting D. 4., which permits VDOE to require that decisions be reissued if there are concerns about the correct use of citations, readability or if there are	VDOE needs to ensure that citations used are correct to ensure that decisions are fair and impartial. Readability is also an

Issue	Source	Comments	VDOE Response
<p>8 VAC 20-81-210 B, F.4., F.5., G.</p> <p>(33 comments)</p>	<p>1 MD 1 PO 6 Par</p>	<p>conflicts in "data." Permitting staff to review decisions for "readability" is vague/arbitrary, and may change the facts or result in substantive changes to the decision, invading the judicial decision-making authority. To the extent that VDOE staff could review an opinion for an error in the name of the child's school or his age or address, this needs to be addressed in narrower language. Errors in fact and errors in law are reserved for the courts. The hearing officer's decision is final and VDOE staff do not have the authority to alter it.</p>	<p>important aspect to ensuring that decisions are understandable and can be implemented appropriately. The proposed regulations contain specific language from the current regulations that prohibits VDOE from reviewing errors of law that are preserved for appellate review.</p> <p>It is important that persons identified in H.4.b. and H.4.c. not be hearing officers in order to avoid conflict of interest.</p> <p>VDOE does not recommend any revisions to this provision.</p>
	<p>2 AO 1 Cit 1 MD 1 PO 6 Par</p>	<p>Support amending H.4.b. to ensure fairness of the due process system: "b. Is an employee of the Virginia Department of Education or the local educational agency that is involved in the education and care of the child of an employee of any local education agency in Virginia."</p>	
	<p>2 AO 1 Cit 1 MD 1 PO 6 Par</p>	<p>Support deleting H.4.c. "4. A hearing shall not be conducted by a person who c. Represents schools or parents in any matter involving special education or disability rights, or is an employee of any parent rights agency or organization, or disability rights agency or organization." As proposed, the regulations permit employees of school-related agencies/organizations to serve as hearing officers, but restrict employees of parents/disability rights agencies from serving, creating an inequity.</p>	
<p>Due Process - Implementation Plan</p> <p>8 VAC 20-81-210 L.6. and N.16.</p> <p>(42 comments)</p>	<p>1 AO 1 Att 20 Cit 19 Par 1 PTA</p>	<p>Oppose the elimination of the provision requiring LEAs to submit an implementation plan to DOE following the rendering of a due process decision or the withdrawal of a hearing request. The proposal that VDOE be provided by the LEA, upon request, with documentation that the area(s) have been corrected is only an after-the-fact requirement upon school divisions. Without this, parents will not have the assurance of knowing when to expect corrections to occur and ensure that their child receives FAPE.</p>	<p>The implementation plan with a 45 day period is already included and was reinserted in the Board's final proposed regulations. It applies specifically to those cases that actually go to full hearing.</p>
<p>Due Process – General</p> <p>8 VAC 20-81-210 C.-O., Q.-S.</p> <p>(22 comments)</p>	<p>2 AO 1 Cit 1 MD 1 PO 6 Par</p>	<p>Support amending E.1. to make a provision for continuing violations or tolling the statute if an individual is incapacitated or whether the timeline is tolled by the filing of a complaint if amendments to the complaint are necessary. Clarification is needed to prevent individuals from being misinformed with regards on their rights and due process.</p>	<p>VDOE does not believe that changes to E.1. are necessary since it provides an adequate time period for a parent to address concerns through a due process hearing.</p> <p>VDOE does not recommend any revisions to these provisions.</p>
	<p>2 AO 1 Cit 1 MD 1 PO 6 Par</p>	<p>Support revising N.17 to retain the 2002 requirement which requires implementation of plans within 45 calendar days of a hearing decision, and that decisions be implemented while a case is being appealed. Allowing LEAs to wait to delay up to a year allows for the possibility of denial of FAPE to a student for that time frame, possibly an increase in the compensatory services due.</p>	
<p>Surrogate Parents</p> <p>8 VAC 20-81-220</p>	<p>2 AO 1 Cit 1 MD 6 Par</p>	<p>Support amending B.1.a. to insert language, as follows: "a. The <u>biological, adoptive</u> parent(s) or guardians are allowing relatives or private individuals to act as a parent;"</p>	<p>The definition of parent in the proposed regulations takes into consideration both federal and state regulations. It is anticipated that these regulations will require many fewer instances for assigning surrogate parents and do not specify the procedures</p>

Issue	Source	Comments	VDOE Response
(50 comments)	2 AO 1 Cit 1 MD 6 Par	Support amending B. 1. b. by replacing the entire proposed provision with the following language: "Any person who can serve as 'parent,' as defined by this chapter in 8 VA Admin. Code § 20-80-10, other than a surrogate parent, is either acting as parent, or is available and willing to act as parent for the purposes of this chapter."	for recruiting surrogate parents at the local level. Language in B.1.c. is consistent with state requirements. The proposed language at 8 VAC 20-81-220 B. 2. is consistent with the federal regulations.
	2 AO 1 Cit 1 MD 6 Par	Support deleting B. 1. c.	
	2 AO 1 Cit 1 MD 6 Par	Support amending B. 2. c. "The child is a ward of the state <u>and the provisions of 8 Va. Admin. Code § 20-81-220(B)(1) do not apply and either subdivision 1.a. or 1.b. of this subsection is also met;</u> "	
	2 AO 1 Cit 1 MD 6 Par	Support amending C.1. "The local educational agency shall establish procedures <u>in accordance with this regulation</u> for determining whether a child needs a surrogate parent."	
Annual Plan 8 VAC 20-81-230 B (13 comments)	2 AO 1 Cit 1 MD 7 Par	Support retaining in 230 B. the 2002 requirement for checks of revisions/amendments to local policies and procedures by respective parties (Special Education Advisory Committee (SEAC), local school board, VDOE): <p>"The annual plan shall include: 1.a. Assurances... <u>and any revisions to such policies and procedures. Local school divisions shall first submit revisions to the policies and procedures to their local school board for approval.</u>...2.... State-operated programs and the Virginia School for the Deaf and Blind at Staunton shall first submit any revisions to the policies and procedures with their annual plan to the state special education advisory committee (<u>SEAC</u>) for review prior to submission to the Virginia Department of Education." Rationales:</p> <ul style="list-style-type: none"> • By removing such oversight, VDOE will be less aware if LEAs incorrectly craft procedural changes. • Special Education Policies and Procedures are not given the same attention and kept updated. Policies and procedures may be changed through practice, but are neither reviewed by the LAC or subsequently properly approved by the School Board. Preserving at least a once yearly requirement for the Special Education Policies and Procedures to be remembered helps to ensure that LEAs give these policies and procedures due consideration and attention. 	In order to minimize local paperwork and to allow flexibility to school divisions, VDOE does not recommend reverting to former requirements related to the submission of local policies and procedures and any amendments to those. It is the responsibility of the localities to have the mechanisms to ensure that they have properly developed policies and procedures. Should someone disagree with local implementation decisions, the VDOE complaint procedures may be used. <p>Nothing in the proposed regulations requires a school division to provide notice and solicit comments on local policies and procedures. Local advisory committees are required to participate in the review of policies and procedures for the provision of special education and related services. Notice of their meetings to the public is required. The public is invited to make public comment to members of local advisory committees.</p> <p>LEAs are responsible for developing local policies and procedures in compliance with state regulations. As with other local regulations, they are not subject to approval by VDOE, but may be reviewed as part of a complaint to VDOE or through Federal Program Monitoring process.</p>
	1 LEA	Opposes any action that would require localities to provide notice and public comment on locally developed procedures. Schools are already required to have these approved by local boards and further requirements would be unwieldy and time-consuming.	

Issue	Source	Comments	VDOE Response
	1 LAC	Suggests that by providing more power and autonomy to LEAs, the state should require districts to provide notice and an opportunity for public comment on their own local rules so parents can present their concerns and express their opinions, thereby ensuring fair and appropriate local regulations.	
Funding - General (except Early Intervening Services) 8 VAC 20-81-230 C. 8 VAC 20-81-240 to 8 VAC 20-81-290 (10 comments)	2 AO 1 Cit 1 MD 6 Par	Support retaining in 8 VAC 20-81-240 A., the 2002 requirement from 8 VAC 20-80-100 which requires any changes to local policies and procedures be submitted to VDOE: "A. ...Changes to the local policies and procedures <u>and supporting documentation</u> shall be <u>submitted upon amendment or revision</u> made as determined by local need, as a result of changes in state or federal laws or regulations, as a result of required corrective action, or as a result of decisions reached in administrative proceedings, judicial determinations, or other findings of noncompliance." Without such oversight, VDOE will be less aware if LEAs incorrectly craft procedural changes.	In order to minimize local paperwork and to allow flexibility to school divisions, VDOE does not recommend reverting to former requirements related to the submission of local policies and procedures and any amendments. It is the responsibility of the localities to have the mechanisms to ensure that they have properly developed policies and procedures. Should someone disagree with local implementation decisions, the VDOE complaint procedures may be used.
Local Advisory Committees (LAC) 8 VAC 20-81-230 D. (67 comments)	1 AO 1 Att 19 Cit 1 LAC 21 Par 1 PTA	Oppose allowing LEA personnel to act as voting members on the LAC. Rationales: <ul style="list-style-type: none"> • A conflict of interest prevents employees from acting in an independent capacity. • As drafted, the regulations permit the LAC to be "packed" with employees, which would inhibit discussions. • Parents and advocates lose a critical means of affecting change within the LEA. • LACs are long established accountability check in the Virginia system, functioning independently, providing constructive criticism and insight. The proposed change could prevent this. • This change does nothing to improve LAC structure and operations and is more likely to further discourage parent participation in LACs. 	Due to the long-standing requirement for local advisory committees and a history of their contributions, the Board of Education maintained the requirement for local advisory committees in its proposed regulations. To address public comments received, however, the committee composition was modified to allow the LAC composition to include a teacher. Specifically, the inclusion of a teacher on each LAC will permit LACs to more accurately mirror the composition of the State Special Education Advisory Committee, permitting multiple constituencies to be represented. In addition, a number of comments were received indicating that parents of students with disabilities who were also school employees were prohibited from participating in the LAC. Since some LEAs have difficulty recruiting active members, the modification provides LEAs more flexibility in recruitment. The proposed regulations require local advisory committees to review the annual plan. The annual plan no longer requires that local policies and procedures be included, however, but certain policies and procedures are required of local school boards. A set of assurances signed by the local superintendent is included with each annual plan.
	1 SSEAC	Opposes the inclusion of a teacher as a voting member of the LAC. Rather, supports retaining the 2002 regulatory language regarding LAC composition. If a teacher is permitted to be a voting member of the LAC, in smaller LACs, there may be undo influence by people who are paid by the LEA.	
	1 LEA	Supports allowing LEA employees to serve as voting members on the LAC, as it would enhance collaboration and bring a broader perspective to the discussions and recommendations the committee makes to the School Board.	
	2 AO 1 Cit 1 MD 7 Par	Support revising D.1.b.: "The committee shall include one teacher <u>who is also the parent of a student receiving services under IDEA</u> ," allowing employees who have children with disabilities to be appointed as voting members on the LAC.	
	2 AO 1 Cit	Support retaining the 2002 requirement for checks of revisions/amendments to local policies and procedures by respective parties (Special Education Advisory	

Issue	Source	Comments	VDOE Response
	1 MD 6 Par	Committee (SEAC), local school board, VDOE) by amending D.2.e "e. Review the policies and procedures for the provision of special education and related services prior to submission to the local school board; and the Virginia Department of Education; and"	
Early Intervening Services 8 VAC 20-81-230 J.; 8 VAC 20-81-260 H (1 comment)	1 AO	Suggests addressing disproportionality concerns by implementing early intervening services.	VDOE does not believe additional language is necessary. Localities will have the flexibility to use early intervening services as appropriate to their localities.
National Instructional Materials Accessibility Center (NIMAC)/ National Accessibility Materials Accessibility Standard (NIMAS) 8 VAC 20-81-230 K. (10 comments)	2 AO 1 Cit 1 MD 6 Par	Support inserting a new provision between currently proposed 230 K.3. and K.4. The new provision would state the following: "4. The local educational agency shall adopt a guidance document outlining the reasonable steps the local education agency will take to facilitate providing instructional materials in accessible formats in a timely manner. The adopted guidance shall also give consideration to availability of supporting assistive technology, supplemental books and materials, advance availability of teacher syllabuses, and availability of trained personnel to proof non-NIMAS documents prior to student receipt."	VDOE does not believe it is appropriate to include the provision of a guidance document in the regulations. VDOE, however, will be available to provide technical assistance and will provide regulatory guidance as it becomes available.
Figures 1 and 2 8 VAC 20-81-340 (10 comments)	2 AO 1 Cit 1 MD 6 Par	Support amending Figure 1 and 2 to include DD caseloads through age 9.	The appendix already reflects the changes to the definition of DD.